

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JANET HULL,

Defendant.

ENTERED ON DOCKET

DATE SEP 29 1998

No. 98-CR-52-H

FILED

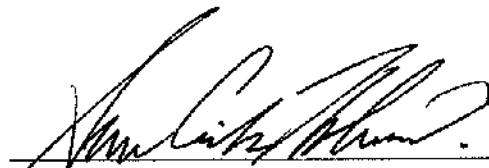
SEP 29 1998

O R D E R

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Now on this 28TH day of September, 1998 this cause comes on to be heard in the matter of the plaintiff's Motion for Leave to Dismiss, without prejudice, Count I of the Indictment against defendant Janet Hull in the above styled cause. The Court finds that said request ought to be granted and Count I of the Indictment against defendant Janet Hull is dismissed, without prejudice.

IT IS SO ORDERED.


SVEN ERIK HOLMES
United States District Judge

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

FILED

SEP 25 1998

UNITED STATES OF AMERICA

Phil Lombardi, Clerk
U.S. DISTRICT COURT

v.

Case Number 98-CR-047-001-C

MATTHEW BAUER
Defendant.

ENTERED ON DOCKET

DATE 9/25/98

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, MATTHEW BAUER, was represented by Jack Winn.

The defendant pleaded guilty to Count 1 of the Indictment, June 18, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21 USC 841(a)(1) & (b)(1)(B)	Possession With Intent to Distribute Methamphetamine	2/20/98	1

As pronounced on September 22, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.


Signed this the 24th day of Sept., 1998.


The Honorable H. Dale Cook
United States District Judge

Defendant's SSN: 601-20-7625

Defendant's Date of Birth: 12/10/74

Defendant's residence and mailing address: c/o Tulsa County Jail, 500 S. Denver, Tulsa, Oklahoma 74103

United States District Court
Northern District of Oklahoma } ss
I hereby certify that the foregoing
is a true copy of the original on file
in this court.
Phil Lombardi, Clerk
By 
Deputy

Defendant: MATTHEW BAUER
Case Number: 98-CR-047-001-C

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 63 months.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: MATTHEW BAUER
Case Number: 98-CR-047-001-C

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 48 months.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: MATTHEW BAUER
Case Number: 98-CR-047-001-C

FINE

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 2,000, as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: MATTHEW BAUER
Case Number: 98-CR-047-001-C

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	25
Criminal History Category:	II
Imprisonment Range:	63 months to 78 months
Supervised Release Range:	4 years
Fine Range:	\$ 10,000 to \$ 2,000,000
Restitution:	\$ n/a

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

BJJ

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

FILED

SEP 25 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 98-CR-026-001-C

RICK LOEWENHERZ
Defendant.

ENTERED ON DOCKET

DATE 9/25/98

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

The defendant, RICK LOEWENHERZ, was represented by Dale Warner.

On motion of the United States the court has dismissed Counts 2 and 4-9 of the Superseding Indictment.

The defendant pleaded guilty to Counts 1 and 3 of the Superseding Indictment, June 22, 1998. Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 1341	Mail Fraud	3/95	1
18 USC 153	Embezzlement Against Estate	4/95	3

As pronounced on September 22, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Counts 1 and 3 of the Superseding Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 24 day of Sept., 1998.



The Honorable H. Dale Cook
United States District Judge

Defendant's SSN: 335-34-5099

Defendant's Date of Birth: 8/16/40

Defendant's residence and mailing address: 130 A East 31st Place, Tulsa OK

United States District Court
Northern District of Oklahoma } ss
I hereby certify that the foregoing
is a true and correct copy of the original on file
in this court.

Phil Lombardi, Clerk
By 
Deputy

Defendant: RICK LOEWENHERZ
Case Number: 98-CR-026-001-C

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 15 months as to each of Counts 1 and 3, said terms to run concurrently, each with the other.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be designated to an institution near Tulsa, Oklahoma.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 9:00 a.m. on October 26, 1998.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: RICK LOEWENHERZ
Case Number: 98-CR-026-001-C

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years as to each of Counts 1 and 3, said terms to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 4) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: RICK LOEWENHERZ
Case Number: 98-CR-026-001-C

RESTITUTION AND FORFEITURE**RESTITUTION**

The defendant shall make restitution in the total amount of \$30,000. Interest on restitution is waived by the Court.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Count 1:	
Nor Am Oil Company Nesflatveien 23 4018 Stavanger Norway	\$21,826.55
Count 3:	
Internal Revenue Service Special Procedures 55 N. Robinson, Stop 5024 Oklahoma City, Oklahoma 73102 re: J. Raiford Luker Jr. and Lvonne Luker Bankruptcy Estate, Case Number 83-00854-W	\$6,776.57
Internal Revenue Service Special Procedures 55 N. Robinson, Stop 5024 Oklahoma City, Oklahoma 73102 re: Quest Petroleum Bankruptcy Estate Case Number 86-01774-M	\$1,396.88

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: RICK LOEWENHERZ
Case Number: 98-CR-026-001-C

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	14	
Criminal History Category:	I	
Imprisonment Range:	15 months to 21 months	Cts. 1 & 3
Supervised Release Range:	2 to 3 years	Cts. 1 & 3
Fine Range:	\$ 4,000 to \$ 40,000	Cts. 1 & 3
Restitution:	\$ 190,690.33	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

Full restitution is not ordered for the following reason: because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

FILED

SEP 25 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURTUNITED STATES DISTRICT COURT
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 98-CR-029-001-C

WALLACE LEROY BROWN
Defendant.

ENTERED ON DOCKET

DATE 9/25/98**JUDGMENT IN A CRIMINAL CASE**
(For Offenses Committed On or After November 1, 1987)

The defendant, WALLACE LEROY BROWN, was represented by Cindy Cunningham.

On motion of the United States the court has dismissed Counts 2, 3 & 4 of the Indictment.


The defendant pleaded guilty to Count 1 of the Indictment, June 15, 1998. Accordingly, the defendant is adjudged guilty of such Count, involving the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 1708	Theft of Mail Matter	1/15/98	1

As pronounced on September 22, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 24 day of Sept., 1998.

 The Honorable H. Dale Cook
 United States District Judge

Defendant's SSN: 239-98-8969

Defendant's Date of Birth: 2/4/57

Defendant's residence and mailing address: 9114 E. 47th Place, Tulsa OK 74116

 United States District Court } SS
 Northern District of Oklahoma }
 I hereby certify that the foregoing
 is a true copy of the original on file
 in this Court.

 Phil Lombardi, Clerk
 By 
 Deputy

Defendant: WALLACE LEROY BROWN
Case Number: 98-CR-029-001-C

PROBATION

The defendant is hereby placed on probation for a term of 48 months.

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
4. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: WALLACE LEROY BROWN
Case Number: 98-CR-029-001-C

FINE

The defendant shall pay a fine of \$ 500, as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of Probation.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: WALLACE LEROY BROWN
Case Number: 98-CR-029-001-C

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$75.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
The Right to Life Crusade c/o Kathleen and Jim Bottell PO Box 2703 Tulsa OK 74102	\$75

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee.

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: WALLACE LEROY BROWN
Case Number: 98-CR-029-001-C

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	4
Criminal History Category:	III
Imprisonment Range:	0 months to 6 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 250 to \$ 5,000
Restitution:	\$ 75

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

BJS

UNITED STATES DISTRICT COURT Northern District of Oklahoma

FILED

SEP 25 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 98-CR-065-001-C

ENTERED ON DOCKET

RONNIE JACK BLANKENSHIP
Defendant.

DATE 9/25/98

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

The defendant, RONNIE JACK BLANKENSHIP, was represented by Cindy Hodges Cunningham.

On motion of the United States the court has dismissed Count 2 of the Superseding Indictment.

The defendant pleaded guilty to Count 1 of the Superseding Indictment, June 19, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

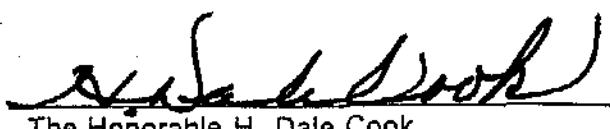
Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 922(g)(8) & 924(a)(2)	Possession of a Firearm in Violation of a Protective Order	3/3/98	1

As pronounced on September 22, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Superseding Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 24th day of Sept., 1998.


The Honorable H. Dale Cook
United States District Judge

United States District Court
Northern District of Oklahoma } SS
I hereby certify that the foregoing
is a true copy of the original on file
in this court.

Phil Lombardi, Clerk

Deputy

Defendant's SSN: 442-66-8901

Defendant's Date of Birth: 4/26/72

Defendant's mailing address: 3338 E. 30 Street, Tulsa OK 74112

Defendant's residence address: c/o Tulsa County Jail, 500 S. Denver, Tulsa OK 74303

Defendant: RONNIE JACK BLANKENSHIP
Case Number: 98-CR-065-001-C

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 15 months.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: RONNIE JACK BLANKENSHIP

Case Number: 98-CR-065-001-C

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
7. The defendant shall successfully participate in a program of domestic violence counseling as directed by the Probation Officer, until such time as release from the program by the Probation Officer.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: RONNIE JACK BLANKENSHIP
Case Number: 98-CR-065-001-C

FINE

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 1,000, as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: RONNIE JACK BLANKENSHIP
Case Number: 98-CR-065-001-C

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	12
Criminal History Category:	III
Imprisonment Range:	15 months to 21 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 3,000 to \$ 30,000
Restitution:	\$ n/a

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

BJS

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

TIMOTHY JOSEPH JOST
 Defendant.

Case Number 98-CR-001-001-K

ENTERED ON DOCKET

DATE

9-24-98

FILED

SEP 24 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, TIMOTHY JOSEPH JOST, was represented by Michael Abel.

On motion of the United States the court has dismissed Counts 1, 3, 4, 5, 6, 7, 8, 10, 11, 12 & 13 of the Indictment.

The defendant pleaded guilty to Counts 2 & 9 of the Indictment, June 17, 1998. Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

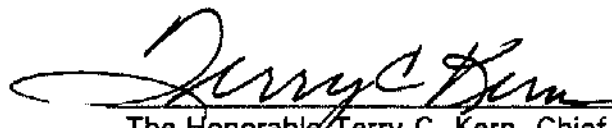
Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 1341 & 2(b)	Mail Fraud and Causing a Criminal Act	10/31/94	2
18 USC 1341 & 2(b)	Mail Fraud and Causing a Criminal Act	5/12/95	9

As pronounced on September 15, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Counts 2 & 9 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 22 day of September, 1998.


 The Honorable Terry C. Kern, Chief
 United States District Judge

Defendant's SSN: 526-80-9620

Defendant's Date of Birth: 8/2/49

Defendant's residence and mailing address: 4550 N. Flowingwells Road, Tucson AZ 85704

Defendant: TIMOTHY JOSEPH JOST
Case Number: 98-CR-001-001-K

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 48 months as to each of Counts 2 and 9, said terms shall run concurrently, each with the other and with the sentences imposed in Case Numbers 98-CR-067-K and 98-CR-079-K.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be incarcerated in a facility in or near Dallas, Texas.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: TIMOTHY JOSEPH JOST

Case Number: 98-CR-001-001-K

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years, as to each of Counts 2 and 9, said terms shall run concurrently, each with the other and with the terms imposed in Case Numbers 98-CR-067-K and 98-CR-079-K.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
6. The defendant shall not engage in sales-related employment nor shall he engage in employment in which he invests money for others, or advises others as to the investment of their monies. All employment shall be approved in advance by the United States Probation Office.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: TIMOTHY JOSEPH JOST
Case Number: 98-CR-001-001-K

RESTITUTION AND FORFEITURE**RESTITUTION**

The defendant shall make restitution in the total amount of \$41,618. Interest on restitution is waived by the Court.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Margaret Fuqua 5116 S.E. Braille Road Bartlesville OK 74006	\$30,018
Leonard Mayberry 2000 S. Osage Bartlesville OK 74003	\$11,600

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: TIMOTHY JOSEPH JOST
Case Number: 98-CR-001-001-K

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	18	
Criminal History Category:	III	
Imprisonment Range:	33 months to 41 months	Cts. 2 & 9
Supervised Release Range:	2 to 3 years	Cts. 2 & 9
Fine Range:	\$ 6,000 to \$ 60,000	Cts. 2 & 9
Restitution:	\$ 41,618	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

Full restitution is not ordered for the following reason(s): because of the defendant's inability to pay.

The sentence departs from the guideline range for the following reason(s): The Court imposes a two-level upward departure pursuant to USSG §5K2.0. The Court finds this case is outside the heartland of cases of this type based upon aggravating circumstances of a kind or to a degree not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence other than that described. The Court finds that the impact of the financial loss and the seriousness of this offense is understated, based upon the number of victims in these cases, the vulnerability of the victims, the fact that the defendant victimized some victims more than once, and the large number of victims. In addition, the offense impacted victims which suffered from serious illnesses, with some victims now being deceased. The offense also impaired the emotional and financial wellness of elderly and retired victims beyond that contemplated by the guidelines. A two-level departure in the offense level provides a total offense level of 20. The guideline range for an upward departure is 41-51 months. Within that range, the Court imposes a sentence of 48 months for each Count of conviction in all three cases.

BTJ

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

ENTERED ON DOCKET

DATE 9-24-98

UNITED STATES OF AMERICA

v.

Case Number 98-CR-079-001-K ✓

TIMOTHY JOSEPH JOST
 Defendant.

JUDGMENT IN A CRIMINAL CASE
 (For Offenses Committed On or After November 1, 1987)

FILED
 SEP 24 1998

Phil Lombardi, Clerk
 U.S. DISTRICT COURT

The defendant, TIMOTHY JOSEPH JOST, was represented by Michael Abel.

The defendant pleaded guilty to Counts 1, 2 & 3 of the Information, June 17, 1998. Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1341 & 2	Mail Fraud and Causing a Criminal Act	12/9/96	1
18 USC 1341 & 2	Mail Fraud and Causing a Criminal Act	2/6/97	2
18 USC 1341 & 2	Mail Fraud and Causing a Criminal Act	4/22/97	3

As pronounced on September 15, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 300, for Counts 1, 2, & 3 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 22 day of September, 1998.


 The Honorable Terry C. Kern, Chief
 United States District Judge

Defendant's SSN: 526-80-9620

Defendant's Date of Birth: 8/2/49

Defendant's residence and mailing address: 4550 N. Flowingwells Road, Tucson AZ 85704

Defendant: TIMOTHY JOSEPH JOST
Case Number: 98-CR-079-001-K

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 48 months, as to each of Counts 1, 2, & 3, said terms to run concurrently, each with the other and with the terms imposed in Case Numbers 98-CR-001-K and 98-CR-067-K.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be placed in a facility in or near Dallas, Texas.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: TIMOTHY JOSEPH JOST
Case Number: 98-CR-079-001-K

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years, as to each of Counts 1, 2 & 3, said terms to run concurrently, each with the other and with the terms imposed in Case Numbers 98-CR-001-K and 98-CR-067-K.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
6. The defendant shall not engage in sales-related employment nor shall he engage in employment in which he invests money for others or advises others as to the investment of their monies. All employment shall be approved in advance by the Probation Office.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: TIMOTHY JOSEPH JOST
Case Number: 98-CR-079-001-K

RESTITUTION AND FORFEITURE**RESTITUTION**

The defendant shall make restitution in the total amount of \$155,236.69. Interest on restitution is waived by the Court.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Lovie and Virginia Morris 1411 Hickory Stick Circle Wichita, Kansas 67230	\$34,967
Werner and Rosalie Freiss 107 N. 199 West Wichita, Kansas 67235	\$85,713
Kenneth and Beverly Brown 2833 North Wilmohr Drive Wichita, Kansas 67223	\$34,556.69

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payees.

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: TIMOTHY JOSEPH JOST
Case Number: 98-CR-079-001-K

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	18	
Criminal History Category:	III	
Imprisonment Range:	33 months to 41 months	Cts. 1, 2 & 3
Supervised Release Range:	2 to 3 years	Cts. 1, 2 & 3
Fine Range:	\$ 6,000 to \$ 60,000	Cts. 1, 2 & 3
Restitution:	\$ 155,236.69	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

Full restitution is not ordered for the following reason(s): because of the defendant's inability to pay.

The sentence departs from the guideline range for the following reason(s): The Court imposes a two-level upward departure pursuant to USSG §5K2.0. The Court finds this case is outside the heartland of cases of this type based upon aggravating circumstances of a kind or to a degree not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence other than that described. The Court finds that the impact of the financial loss and the seriousness of this offense is understated, based upon the number of victims in these cases, the vulnerability of the victims, the fact that the defendant victimized some victims more than once, and the large number of victims. In addition, the offense impacted victims which suffered from serious illnesses, with some victims now being deceased. The offense also impaired the emotional and financial wellness of elderly and retired victims beyond that contemplated by the guidelines. A two-level departure in the offense level provides a total offense level of 20. The guideline range for an upward departure is 41-51 months. Within that range, the Court imposes a sentence of 48 months for each Count of conviction in all three cases.

BTJ

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 98-CR-067-001-K ✓

ENTERED ON DOCKET

DATE 9-24-98

TIMOTHY JOSEPH JOST
 Defendant.

JUDGMENT IN A CRIMINAL CASE
 (For Offenses Committed On or After November 1, 1987)

FILED
 SEP 24 1998
 Phil Lombardi, Clerk
 U.S. DISTRICT COURT

The defendant, TIMOTHY JOSEPH JOST, was represented by Michael Abel.

The defendant pleaded guilty to Counts 1 & 2 of the Information, June 17, 1998. Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1341	Mail Fraud	8/28/96	1
18 USC 1342	Fictitious Name - Mail Fraud	8/28/96	2

As pronounced on September 15, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Counts 1 & 2 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 22 day of September, 1998.


 The Honorable Terry C. Kern, Chief
 United States District Judge

Defendant's SSN: 526-80-9620

Defendant's Date of Birth: 8/2/49

Defendant's residence and mailing address: 4550 N. Flowingwells Road, Tucson AZ 85704

Defendant: TIMOTHY JOSEPH JOST
Case Number: 98-CR-067-001-K

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 48 months, as to each of Counts 1 & 2, said terms to run concurrently, each with the other and with terms imposed in Case Numbers 98-CR-001-K and 98-CR-079-K.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be placed in a facility in or near Dallas, Texas.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: TIMOTHY JOSEPH JOST

Case Number: 98-CR-067-001-K

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years, as to each of Counts 1 & 2, said terms to run concurrently, each with the other and with the terms imposed in Case Numbers 98-CR-001-K and 98-CR-067-K.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency. The defendant shall not engage in sales-related employment nor shall he engage in employment in which he invests money for others or advises others as to the investment of their monies. All employment shall be approved in advance by the United States Probation Office.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: TIMOTHY JOSEPH JOST
Case Number: 98-CR-067-001-K

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$16,461.66. Interest on restitution is waived by the Court.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Arley and Francis Bontrager 32 Duvall Bella Vista, Arkansas 72714	\$8,525
Keith Bohrer 1 Verin Lane Hot Springs, Arkansas 71909	\$7,936.66

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payees.

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: TIMOTHY JOSEPH JOST
Case Number: 98-CR-067-001-K

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	18	
Criminal History Category:	III	
Imprisonment Range:	33 months to 41 months	Cts. 1 & 2
Supervised Release Range:	2 to 3 years	Cts. 1 & 2
Fine Range:	\$ 6,000 to \$ 60,000	Cts. 1 & 2
Restitution:	\$ 16,461.66	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

Full restitution is not ordered for the following reason(s): because of the defendant's inability to pay.

The sentence departs from the guideline range for the following reason(s): The Court imposes a two-level upward departure pursuant to USSG §5K2.0. The Court finds this case is outside the heartland of cases of this type based upon aggravating circumstances of a kind or to a degree not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence other than that described. The Court finds that the impact of the financial loss and the seriousness of this offense is understated, based upon the number of victims in these cases, the vulnerability of the victims, the fact that the defendant victimized some victims more than once, and the large number of victims. In addition, the offense impacted victims which suffered from serious illnesses, with some victims now being deceased. The offense also impaired the emotional and financial wellness of elderly and retired victims beyond that contemplated by the guidelines. A two-level departure in the offense level provides a total offense level of 20. The guideline range for an upward departure is 41-51 months. Within that range, the Court imposes a sentence of 48 months for each Count of conviction in all three cases.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

MARK DONALD HOOSIER,

Defendant.

ENTERED ON DOCKET

DATE SEP 24 1998

No. 97-CR-11-K ✓

FILED

24 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

Now on this 22 day of September, 1998, this cause comes on to be heard in the matter of the plaintiff's Motion for Leave to Dismiss, without prejudice, the Indictment against defendant in the above styled cause. The Court finds that said request ought to be granted and the Indictment against defendant MARK DONALD HOOSIER is dismissed, without prejudice.

IT IS SO ORDERED.



Chief Judge
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE **FILED**
NORTHERN DISTRICT OF OKLAHOMA

SEP 22 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAVIER GONZALEZ,

Defendant.

No. 93-CR-15-C

ENTERED ON DOCKET
SEP 24 1998
DATE

ORDER


Before the Court is the motion filed by defendant, Javier Gonzalez, seeking to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255. Gonzalez's present motion was filed on May 22, 1998. Upon examining the record, the Court has discovered that Gonzalez previously filed a § 2255 motion on April 15, 1996. This Court granted Gonzalez's prior § 2255 on June 7, 1996.

With respect to the present motion, however, the Court notes that § 2255, as amended by the Antiterrorism and Effective Death Penalty Act of 1996, requires that a "second or successive motion . . . be certified as provided in section 2244 by a panel of the appropriate court of appeals . . ." The Court concludes that the "second or successive" requirements of § 2255 apply to Gonzalez's present motion, since it was filed after the amendments to § 2255 went into effect. See, Nunez v. U.S., 96 F.3d 990, 991 (7th Cir.1996) (district court has no option other than to deny defendant's second § 2255 petition since the Circuit is the only court that may authorize the commencement of a second or successive petition).

Accordingly, based upon the 1996 amendments to § 2255, this Court lacks authority to entertain Gonzalez's present § 2255 motion. Gonzalez must seek certification from the Circuit before this Court may entertain his present motion. Rather than dismiss his motion, however, the Tenth

Circuit has instructed that when "a second or successive . . . § 2255 motion is filed in the district court without the required authorization by [the Circuit], the district court should transfer the . . . motion to [the Circuit] in the interest of justice pursuant to [28 U.S.C.] § 1631." Coleman v. U.S., 106 F.3d 339, 341 (10th Cir.1997). Gonzalez's present § 2255 motion is therefore transferred to the Tenth Circuit for certification.

IT IS SO ORDERED this 22nd day of September, 1998.


H. DALE COOK
United States District Judge

In the United States District Court

for the Northern District of Oklahoma

FILED

SEP 22 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

United States of America

v.

Criminal No. 97-CR-39-BU

Robert Michael Clark

a/k/a Michael W. Taylor,
a/k/a Michael West,
a/k/a Christopher K. Long,
a/k/a David Allen

ENTERED ON DOCKET

DATE SEP 23 1998

Consent to Transfer of Case

for Plea and Sentence

(Under Rule 20)

I, Robert Michael Clark, defendant, have been informed that an indictment (indictment, ~~information, or information~~) is pending against me in the above designated cause. I wish to plead guilty (guilty, nolo contendere) to the offense charged, to consent to the disposition of the case in the District of Oregon in which I am under arrest and (am under arrest, am held) and to waive am being held trial in the above captioned District.

Dated: Sept 4, 19 98 at 4:20 AM

Robert M. Clark
(Defendant)

[Signature]
(Witness)

[Signature]
(Counsel for Defendant)

Approved

[Signature]
United States Attorney for the

[Signature]
United States Attorney for the

District of

Northern

District of

Oregon

Oklahoma

FILED

SEP 22 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 98-CR-045-001-BU

EDELBERTO RAMOS
Defendant.

ENTERED ON DOCKET
DATE 9-22-98

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, EDELBERTO RAMOS, was represented by Larry D. Wagener.

The defendant pleaded guilty to Count 1 of the Indictment, June 17, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:


Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 846	Conspiracy to Possess With Intent to Distribute a Controlled Substance	3/19/98	1

As pronounced on September 22, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 22nd day of September, 1998.


The Honorable Michael Burrage
United States District Judge

Defendant's SSN: 518-80-3411

Defendant's Date of Birth: 2/7/56

Defendant's mailing address: 136 N. Columbia, Tulsa OK 74115

Defendant's residence address: Tulsa County Jail, 500 S. Denver, Tulsa OK 74103

CLT

Defendant: EDELBERTO RAMOS
Case Number: 98-CR-045-001-BU

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 33 months.

The defendant is remanded to the custody of the United States Marshal.

The Court requested that the United States Marshal obtain expedited designation.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: EDELBERTO RAMOS
Case Number: 98-CR-045-001-BU

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: EDELBERTO RAMOS
Case Number: 98-CR-045-001-BU

FINE

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 1,000, as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: EDELBERTO RAMOS
Case Number: 98-CR-045-001-BU

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	19
Criminal History Category:	I
Imprisonment Range:	30 months to 37 months
Supervised Release Range:	3 years
Fine Range:	\$ 7,500 to \$ 75,000
Restitution:	\$ n/a

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

BJB

FILED

SEP 21 1998

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE 9-21-98

UNITED STATES OF AMERICA
Plaintiff

VS

MARCO DARNELL MORRISON
Defendant

Case Number 93-CR-112-001-B

ORDER REVOKING SUPERVISED RELEASE

Now on this 17th day of September 1998, this cause comes on for revocation and sentencing concerning allegations that the defendant violated conditions of supervised release as set out in the Amended Petition on Supervised Release filed on September 1, 1998. The defendant is present in person and represented by counsel, Cindy H. Cunningham. The Government is represented by Assistant United States Attorney, Lucy Creekmore, and the United States Probation Office is represented by David Plunkett.

During the hearing, the defendant stipulated to the allegations noted in the Amended Petition on Supervised Release. Said allegations being that he committed crimes while on supervision; that he failed to submit a monthly report within the first five days of each month; that he failed to notify the probation officer within seventy-two hours of any change in residence or employment; and that he used controlled substances while on supervision. The Court found that the defendant was in violation of the conditions of his release and supervised release was revoked. The Government and the defendant waived additional time for a sentencing hearing. The Court proceeded with sentencing and found that the original offense of conviction occurred after November 1, 1987, and that Chapter 7 of the U. S. Sentencing Guidelines is applicable. Further, the Court found that the most serious

violation of supervised release constituted a Grade B violation in accordance with USSG § 7B1.1(a)(2), and the defendant's Criminal History Category of IV is applicable for determining the imprisonment range. In addition, the Court found that a Grade B violation and a Criminal History Category of IV establish a revocation imprisonment range of twelve (12) to eighteen (18) months in accordance with USSG § 7B1.4(a) and 18 U.S.C. § 3583(e). In consideration of these findings and pursuant to U.S. vs. Lee, 757 F.2d 770 (10th Cir. 1992), in which the circuit determined that the policy statements in Chapter 7 were not mandatory, but must be considered by the Court, the following sentence is ordered:

It is the judgment of the Court that the defendant, Marco Darnell Morrison, is hereby committed to the custody of the U.S. Bureau of Prisons to be imprisoned for a term of twenty-four (24) months. The Court recommends that, classification provisions permitting, the defendant be confined in a facility capable of providing the 500 hour comprehensive substance abuse treatment.

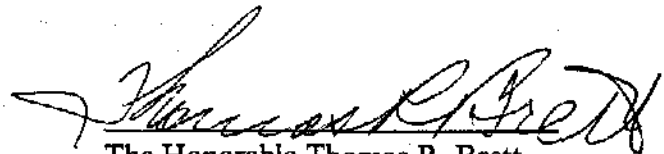
Upon release from imprisonment, the defendant shall be placed on supervised release for a term of twelve (12) months. Within 72 hours of release from custody of the Bureau of Prisons, the defendant shall report in person to the probation office in the district to which he is released. While on supervised release, the defendant shall not commit another federal, state, or local crime, shall comply with the standard conditions that have been adopted by this Court, and shall comply with the following additional conditions:


1. The defendant shall not own or possess a firearm or destructive device.
2. The defendant shall participate in a program of testing and treatment for drug abuse, as directed by the probation officer, until such time as he is released from the program by the probation officer.

3. The defendant shall abide by the Special Search and Seizure Condition as enumerated in Miscellaneous Order M-128, filed with the Clerk of the Court on May 25, 1995.
4. The defendant shall participate in a program for sex offenders as directed by the probation officer, until such time as released from the program by the probation officer.

It is ordered that the defendant pay the fine balance in the amount of \$1,432. This amount will be paid immediately. Any amount not paid immediately shall be paid while the defendant is in custody through the Bureau of Prisons' Inmate Financial Responsibility Program.

The defendant is remanded to the custody of the U.S. Marshal Service for immediate transport to the Bureau of Prison's facility of designation.


The Honorable Thomas R. Brett
Senior United States District Judge

United States District Court }
Northern District of Oklahoma } SS
I hereby certify that the foregoing
is a true copy of the original on file
in this court.
By  Phil Lombardi, Clerk
Deputy

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 18 1998

UNITED STATES OF AMERICA
Plaintiff

VS

JIMMY HARLAN MOORE, JR.
Defendant

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case Number: 88-CR-136-001-C

ENTERED ON DOCKET

DATE 9/21/98

ORDER REVOKING TERM OF SUPERVISED RELEASE

Now on this 10th day of September, 1998, this cause comes on for sentencing after a finding that the defendant violated his conditions of supervised release as set out in the Petition on Supervised Release filed on August 18, 1998. The defendant is present in person and with his attorney, Stephen J. Knorr. The Government is represented by Assistant United States Attorney Susan Morgan, and the United States Probation Office is represented by Nicole Lebeda.

On March 3, 1989, Moore was sentenced to a 42 month custody term followed by a five year term of supervised release, following his guilty plea to a one-count Information charging Armed Robbery and Aiding and Abetting, in violation of 18 U.S.C. § 2113(a)(d) and 2, a Class B Felony. Moore was ordered to pay a special assessment of \$50.


The term of supervised release commenced on July 18, 1995. On August 27, 1998, the Court revoked Moore's term of supervised release for a new law violation and possession of a firearm as alleged in the Petition on Supervised Release, concluding Moore committed a Grade A violation.

The Court finds that the instant conviction occurred after November 1987, and that Chapter 7 of the Sentencing Guidelines is applicable. Further, the Court finds that one of the violations

constitutes a Grade A violation and the defendant's original Criminal History Category of I is applicable for determination of the Chapter 7 sentencing range. A Grade A violation and a Criminal History Category I establish an imprisonment sentence of 12-18 months. In consideration of these findings and pursuant to U.S. v Lee, 957 F.2d 770 (10th Cir. 1992), in which the Circuit determined that the policy statements in Chapter 7 are not mandatory but must be considered by the Court, the following is ordered:

It is the judgment of the Court that the term of supervised release is hereby revoked, and the defendant is committed to the custody of the Bureau of Prisons for a term of fifteen (15) months.

The defendant is remanded to the custody of the United States Marshal.


The Honorable H. Dale Cook
United States District Judge

United States District Court } ss
Northern District of Oklahoma }
I hereby certify that the foregoing
is a true copy of the original on file
in this court.

By 
Phil Lombardi, Clerk
Deputy

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

ENTERED ON DOCKET
 DATE 9-18-98

UNITED STATES OF AMERICA

v.

Case Number 98-CR-031-001-K

JAMES ELDON ETHINGTON JR.
 Defendant.

FILED

SEP 18 1998

JUDGMENT IN A CRIMINAL CASE
 (For Offenses Committed On or After November 1, 1987)

Phil Lombardi, Clerk
 U.S. DISTRICT COURT

The defendant, JAMES ELDON ETHINGTON JR., was represented by Cindy Cunningham.

The defendant pleaded guilty to Count 1 of the Indictment, June 3, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1711	Misapplication of Postal Funds	7/10/97	1

As pronounced on September 10, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 17 day of September, 1998.


 The Honorable Terry C. Kern, Chief
 United States District Judge

Defendant's SSN: 441-56-1675

Defendant's Date of Birth: 3/14/53

Defendant's residence and mailing address: 6921 E. 20th Place, Tulsa OK 74112

Defendant: JAMES ELTON ETHINGTON JR.
Case Number: 98-CR-031-001-K

PROBATION

The defendant is hereby placed on probation for a term of three (3) years.

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: JAMES ELDON ETHINGTON JR.
Case Number: 98-CR-031-001-K

FINE

The defendant shall pay a fine of \$ 500, as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of Probation.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: JAMES ELTON ETHINGTON JR.
Case Number: 98-CR-031-001-K

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$3,887.03.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
U.S. Postal Service Minneapolis Information Service Center One Federal Drive Fort Snelling, MN 55511-9000	\$3,887.03

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: JAMES ELDON ETHINGTON JR.
Case Number: 98-CR-031-001-K

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	7
Criminal History Category:	1
Imprisonment Range:	0 months to 6 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 500 to \$ 5,000
Restitution:	\$ 3,887.03

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

con for

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

UNITED STATES OF AMERICA

ENTERED ON DOCKET

DATE

9-18-98

v.

Case Number 98-CR-006-001-K

JAMES EDWARD HICKS
 Defendant.

FILED

SEP 18 1998

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

The defendant, JAMES EDWARD HICKS, was represented by R. Lawrence Roberson.

The defendant was found guilty May 20, 1998, on Counts 1 through 12 of the Superseding Indictment after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such Counts, involving the following offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1951 & 2	Armed Robbery Affecting Interstate Commerce	11-6-97	1
18 USC 924(c) & 2	Possession of a Firearm While in Commission of a Violent Crime	11-6-97	2
18 USC 1951	Armed Robbery Affecting Interstate Commerce	11-14-97	3
18 USC 924(c)	Possession of a Firearm While in Commission of a Violent Crime	11-14-97	4
18 USC 1951 & 2	Armed Robbery Affecting Interstate Commerce and Aiding and Abetting	11-17-97	5
18 USC 924(c) & 2	Possession of a Firearm While in Commission of a Violent Crime and Aiding and Abetting	11-17-97	6
18 USC 1951 & 2	Armed Robbery Affecting Interstate Commerce and Aiding and Abetting	11-28-97	7
18 USC 924(c) & 2	Possession of a Firearm While in Commission of a Violent Crime and Aiding and Abetting	11-28-97	8
18 USC 1951	Armed Robbery Affecting Interstate Commerce	11-29-97	9
18 USC 924(c)	Possession of a Firearm While in Commission of a Violent Crime	11-29-97	10
18 USC 1951	Armed Robbery Affecting Interstate Commerce	11-29-97	11
18 USC 924(c)	Possession of a Firearm While in Commission of a Violent Crime	11-29-97	12

As pronounced on September 14, 1998, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 1200, for Counts 1 through 12 of the Superseding Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 17 day of September, 1998.


The Honorable Terry C. Kern, Chief
United States District Judge

Defendant's SSN: 244-17-2939

Defendant's Date of Birth: 6/30/73

Defendant's residence and mailing address: 1048 E. 57th Place, Tulsa OK 74105

Defendant: JAMES EDWARD HICKS
Case Number: 98-CR-006-001-K

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total of 1,350 months, to be served as follows: 90 months as to each of Counts 1, 3, 5, 7, 9 & 11, said terms to run concurrently, each with the other; 60 months as to Count 2, to run consecutively to the sentence imposed in Counts 1, 3, 5, 7, 9, & 11; 240 months as to each of Counts 4, 6, 8, 10 & 12, to run consecutively to each other and to all other counts.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: JAMES EDWARD HICKS
Case Number: 98-CR-006-001-K

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years, as to each count, said terms to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: JAMES EDWARD HICKS
Case Number: 98-CR-006-001-K

RESTITUTION AND FORFEITURE
RESTITUTION

The defendant shall make restitution in the total amount of \$17,985.28. Interest on restitution is waived by the Court.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Rent Quik Inc. 7850 East Admiral Place Tulsa OK 74115 Attn: Al King	\$12,600
Home Choice 5326 S. Peoria Avenue Tulsa OK 74105 Attn: Jimmy Childs	\$1,500
Fairfield Inn 9020 East 71st Street Tulsa OK 74133 Attn: Teresa Reynolds	\$480
Little Caesars 7104 S. Sheridan Road Tulsa OK 74136 Attn: Al Blades	\$1,500
Holiday Inn Express 3131 East 51st Street Tulsa OK 74105 Attn: Mike Bollinger	\$621
Radio Shack District Office 4528 S. Sheridan, Suite 223 Tulsa OK 74145 Attn: Steven Pippen	\$1,224.28
Jason Lee Harrison 547 East 139th Street Glenpool OK 74033	\$30
Michael Durbin 6760 East 26th Place Tulsa OK 74124	\$30

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payees. Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release. The amount of \$1,980 shall be paid jointly and severally with Clyde McShan, case number 98-CR-08-01-C, \$480 to Fairfield Inn and \$1,500 to Little Caesar's.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: JAMES EDWARD HICKS
Case Number: 98-CR-006-001-K

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	28	
Criminal History Category:	I	
Imprisonment Range:	78 months to 97 months	Cts. 1, 3, 5, 7, 9 & 11
	60 months	Ct. 2
	240 months	Cts. 4, 6, 8, 10 & 12
Supervised Release Range:	2 to 3 years	Cts. 1-12
Fine Range:	\$ 15,000 to \$ 150,000	Cts. 1-12
Restitution:	\$ 17,985.28	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the Court finds no reason to depart from the sentence called for by application of the guidelines.

[Handwritten signature]

aw

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

UNITED STATES OF AMERICA

ENTERED ON DOCKET
 DATE 9-18-98

v.

Case Number 98-CR-028-001-K

LINDA FAYE EDMONDSON
 Defendant.

JUDGMENT IN A CRIMINAL CASE
 (For Offenses Committed On or After November 1, 1987)

FILE

SEP 18 1998

The defendant, LINDA FAYE EDMONDSON, was represented by Cindy Cunningham.

Phil Lombardi, Clerk
 U.S. DISTRICT COURT

On motion of the United States the court has dismissed Counts 2-5 & 7-10 of the Indictment.

The defendant pleaded guilty to Counts 1 & 6 of the Indictment, April 29, 1998. Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 1343 & 2(b)	Wire Fraud Causing a Criminal Act	4-1-93	1
18 USC 1343 & 2(b)	Wire Fraud Causing a Criminal Act	8-3-93	6

As pronounced on September 14, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Counts 1 & 6 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 17 day of September, 1998.


 The Honorable Terry C. Kern, Chief
 United States District Judge

Defendant's SSN: 435-66-6665

Defendant's Date of Birth: 02/18/48

Defendant's mailing address: 3628 N. Old Kilbourne Rd., Oak Grove LA 71263

Defendant's residence address: Oklahoma Department of Corrections

Defendant: LINDA FAYE EDMONDSON
Case Number: 98-CR-028-001-K

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 30 months, as to each of Counts 1 and 6, said terms to run concurrently, each with the other, and consecutively to the Tulsa County Case Number CF 96-1342.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: LINDA FAYE EDMONDSON
Case Number: 98-CR-028-001-K

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years, as to each of Counts 1 and 6, said terms to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: LINDA FAYE EDMONDSON
Case Number: 98-CR-028-001-K

RESTITUTION AND FORFEITURE**RESTITUTION**

The defendant shall make restitution in the total amount of \$25,000. Interest on restitution is waived by the Court.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Defense Finance & Accounting Service FRCAF 188 224-18-6946 PO Box 99191 Columbus, Ohio 44199-1126	\$16,000
Social Security Administration S.E. Programs Center Ref: 224-18-6946 PO Box 10085 Birmingham, AL 35202	\$9,000

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: LINDA FAYE EDMONDSON
Case Number: 98-CR-028-001-K

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	13	
Criminal History Category:	IV	
Imprisonment Range:	24 months to 30 months	Cts. 1 & 6
Supervised Release Range:	2 to 3 years	Cts. 1 & 6
Fine Range:	\$ 3,000 to \$ 30,000	Cts. 1 & 6
Restitution:	\$ 87,896.98	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

Full restitution is not ordered for the following reason(s): because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 15 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DENNIS HARRIS,

Defendant.

No. 90-CR-030-B
(97-CV-399-B)

ENTERED ON DOCKET

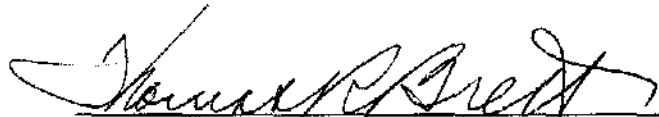
DATE SEP 16 1998

JUDGMENT

This matter came before the Court upon Defendant's motion to vacate set aside or correct sentence pursuant to 28 U.S.C. § 2255. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Plaintiff and against Defendant.

SO ORDERED THIS 14th day of Sept, 1998.



THOMAS R. BRETT, Senior Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 15 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DENNIS HARRIS,

Defendant.

No. 90-CR-030-B
(97-CV-399-B)

ENTERED ON DOCKET

DATE **SEP 16 1998**

ORDER

Before the Court is the *pro se* Defendant Dennis Harris' motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (Docket #98), along with his accompanying memorandum (#100).¹ The government has filed its response (#103), to which Defendant has filed a reply (#104). After reviewing the entire record in this case, the Court finds that an evidentiary hearing is not necessary and that the motion lacks merit and should be denied.

BACKGROUND

On June 6, 1990, Defendant was charged in a superseding indictment with twenty-two (22) counts including conspiracy to commit mail and wire fraud (count 1) and twenty-one specific substantive offenses involving mail and wire fraud (counts 2-22). (#43). The charges stemmed from an alleged scheme devised and carried out by Defendant and his three co-defendants during the first

¹Defendant's memorandum, also signed by co-defendant Carl Helms, opens with the following language: "COMES NOW Petitioner, Dennis Harris, in addition with codefendant, Carl Helms, who adopts this Memorandum in support of the Motion in its entirety and accepts the findings of this Court, hereinafter referred to as Petitioner or Harris" (#100 at 1). Helms is not a signatory to the § 2255 motion, nor is there any other reference to him or his conviction in the motion or memorandum. The Court emphasizes that this Order applies only to Defendant Dennis Harris and that the inclusion of co-defendant Helms as noted on the Memorandum in no way extends Defendant Harris' claims for relief pursuant to § 2255 to co-defendant Carl Helms.

ten months of 1987 to induce investors to purchase distributorships in three companies—Industrial Distributors, Inc., Vision Master Industries, Inc., and General Lighting Company, Inc. The defendants allegedly made numerous misrepresentations to investors regarding their investments, including false statements concerning the supply of inventory, the distributorship arrangement itself, the defendants' participation in prior ventures then under criminal investigation in Texas, and the availability of refunds. These charges followed Defendant's conviction in 1988 on 41 similar federal charges in Texas, arising out of a similar scheme which defrauded investors of over \$5 million. Defendant was sentenced in the Texas case to consecutive five year terms on each of 12 counts, for a total of 60 years, plus restitution in the amount of \$5,343,940. Defendant's conviction and sentence in the Texas case were affirmed. United States v. Helms, 897 F.2d 1293 (5th Cir. 1990).

In the instant case, Defendant pled guilty to count 22 in accordance with a plea agreement in which the government agreed to dismiss counts 1-21 and recommend that any sentence imposed run concurrently with Defendant's sentence received in the Texas case. Defendant's attorney filed a sentencing memorandum (#81) and the Court held a sentencing hearing on August 16, 1990 at which the government presented testimony as to the amount of losses sustained by some 921 investors in the fraudulent ventures.² At the sentencing hearing, counsel stipulated that the figure of \$7,990,000 should be used for purposes of calculating restitution. (Tr. of Sent. Hr'g at 29). Defendant was sentenced to five years imprisonment to run concurrently with his 60 year sentence from the Northern District of Texas. The Court also imposed restitution in the amount of \$1,997,000, equal to approximately one-fourth of the figure stipulated. (#80). The remaining counts

²The Sentencing Guidelines were not applicable here because the offenses occurred prior to November 1, 1987, the effective date of the Guidelines.

1-21 of the indictment were dismissed.

Defendant did ~~not~~ appeal. However, on December 17, 1990 Defendant filed a Rule 35 motion *pro se* seeking a reduction of the term of imprisonment imposed. The Court determined again that the sentence ~~was fair~~ under the circumstances, and denied the motion on March 18, 1991. (#95).

On April 25, 1997, Defendant filed this motion for collateral relief raising two issues:

- (1) Whether ~~Petitioner's~~ Substantial and Constitutional Rights were violated by Ineffective Assistance of Counsel as a whole.
Supporting facts: Counsel failed to object properly to the PSI report, to place evidence on the record on the Restitution issue, failed to raise the prejudice of the illegal sentence, and failed to protect Petitioner's Constitutional rights.
- (2) Whether ~~Petitioner's~~ Substantial and Constitutional Rights were violated in sentencing by being sentenced illegally, and erroneously being sentenced to Restitution.
Supporting facts: Sentencing counsel failed to object, argue, present witnesses or evidence, when it was available to mitigate sentence, virtually allowing an illegal sentence.

(#98 at 5). Defendant's claims center around the amount of restitution (\$1,997,000) imposed as part of his sentence. Defendant alleges that under the Supreme Court's decision in Hughey,³ restitution may not exceed \$8,900, the amount of loss which Defendant claims is tied to the count to which Defendant pled guilty. Further, the Defendant contends that the evidence showed that he was unable to pay any amount of restitution. Defendant claims that his counsel was ineffective for failing to: object to the Presentence Report ("PSR") relied on by the Court; argue that Hughey limited the amount of restitution; or present evidence in mitigation.

The government responds that Defendant's challenge to restitution is procedurally barred,

³Hughey v. United States, 495 U.S. 411 (1990).

and that, moreover, defense counsel did file a presentencing brief discussing mitigating factors as they related to restitution. Further, the government concludes that the question of restitution is academic in any event, because Defendant's obligation to pay restitution statutorily expires five years from August, 1995, the end of Defendant's five year prison term in this case. The government views as nearly impossible Defendant first satisfying the prior Texas restitution order of over \$5 million before August, 2000, and states it "has no objection to the court granting defendant's requested relief, i.e., 'The Petitioner requests that the Court vacate and set aside the Restitution part of his sentence...'" (#103 at 6-7).

ANALYSIS

A. Excessive restitution claim.

The Court first addresses the government's statement that it has no objection to the Court vacating the restitution order imposed as part of Defendant's sentence, because it seems unlikely to the government that Defendant will be able to satisfy the obligation before it expires. Neither party cites any authority justifying the vacation of a restitution obligation merely because it appears, some years after judgment was entered, that a defendant likely might fail to satisfy the debt, and the Court is not inclined to take such an unprecedented step now. Accordingly, the Court declines to vacate summarily the restitution order as suggested by the government.

The government also argues the defense of procedural bar resulting from Defendant's failure to raise on appeal the excessive restitution claim now presented in the instant § 2255 motion. It is well settled that "[s]ection 2255 motions are not available to test the legality of matters which should have been raised on direct appeal." United States v. Warner, 23 F.3d 287, 291 (10th Cir. 1994)

(citation omitted). Consequently, a defendant may not assert issues which were not raised on direct appeal unless he establishes cause for his default and prejudice resulting therefrom, or can show that a fundamental miscarriage of justice will occur if his claim is not addressed. United States v. Cook, 45 F.3d 388, 392 (10th Cir.1995). The procedural default rules developed in the context of habeas corpus cases apply with equal force in § 2255 cases. United States v. Frady, 456 U.S. 152, 166-69 n. 15 (1982).

The "cause" standard requires a defendant to show that some objective factor external to the defense impeded his ability to raise an issue on direct appeal. See Murray v. Carrier, 477 U.S. 478, 488 (1986). Examples of such external factors include the discovery of new evidence or a change in the law. Id. Ineffective assistance of counsel is another example of an external factor that may constitute "cause" excusing a procedural default. Cook, 45 F.3d at 392. As for prejudice, a defendant must show "'actual prejudice' resulting from the errors of which he complains." Frady, 456 U.S. at 168 (1982). The "fundamental miscarriage of justice" exception requires a defendant to demonstrate that he is "actually innocent" of the crime of which he was convicted. McCleskey v. Zant, 499 U.S. 467, 494 (1991).

In his reply to the government's response raising the procedural bar, Defendant alleges that any errors arose from his counsel's failure to protect his rights. (#104 at 2). Therefore, the Court examines whether Defendant's allegations of ineffective assistance of counsel constitute "cause" sufficient to overcome the procedural bar as to his claim of excessive restitution.

To establish ineffective assistance of counsel a defendant must show that his counsel's performance was deficient and that the deficient performance was prejudicial. Strickland v. Washington, 466 U.S. 668, 687 (1984). Although the Strickland test was formulated in the context

of evaluating a claim of ineffective assistance of trial counsel, the same test is applied in assessing the ineffectiveness of appellate counsel. Cook, 45 F.3d at 392.

Because the procedural bar is imposed due to Defendant's failure to raise his claims on direct appeal, the Court ~~must examine~~ the merits of the issues. Id. If the claims are without merit, counsel's failure to ~~appeal them~~ does not amount to constitutionally ineffective assistance of counsel. Id. at 393.

Defendant ~~contends that~~ the amount of restitution he was ordered to pay is excessive and illegal. He argues ~~that, under Hughey~~, restitution is limited to the loss mentioned in count 22, to which Defendant ~~pled guilty~~. Count 22 references a mailgram sent by Vision Master Industries to a Kansas investor ~~complaining~~ him for completing payment of \$8,900 on his service agreement.

Under the ~~Victim and~~ Witness Protection Act of 1982 ("VWPA"), formerly 18 U.S.C. §§ 3579 and 3580 and ~~repealed~~ under the Sentencing Reform Act of 1984 at 18 U.S.C. §§ 3663 and 3664, a sentencing ~~court has the~~ authority to order the defendant to make restitution to any victim of the offense. In Hughey v. United States, 495 U.S. 411, 420 (1990), the Supreme Court held that § 3580 authorizes ~~courts to include~~ in their restitution calculation losses resulting only from conduct underlying the offense of conviction. In Hughey, the defendant was indicted for three counts of theft by a United States Postal Service employee and three counts of unauthorized credit card use. The defendant pleaded guilty to one count of unauthorized credit card use in exchange for the government dismissing the remaining charges. 495 U.S. at 413. The Supreme Court held that the defendant could be ordered to pay restitution only for the amount of loss resulting from the credit card count to which he pleaded guilty. Id. at 422. See also United States v. Cook, 952 F.2d 1262, 1263-65 (10th Cir. 1991) (defendant, who pleaded guilty to three counts of a forty-three count

indictment charging embezzlement of social security benefits, could not be charged restitution in any amount greater than the three social security checks underlying her three counts of conviction).⁴

In the instant case, paragraphs 1 through 4 of count 2 of the superseding indictment charged the overall scheme of mail and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343, and each of counts 2 (paragraph 5) and counts 3-22 alleged a particular mailing or wire transmission in furtherance of that scheme. (#43). Each of counts 3-22 explicitly incorporated by reference the overall scheme to defraud set out in detail in paragraphs 1 through 4 of count 2.

The circuits have split on the application of Hughey to mail or wire fraud cases where, as here, the specific offense of conviction involves a particular mailing which incorporates by reference the overall scheme to defraud. Some circuits hold that because a mail or wire fraud conviction requires proof of the overall fraudulent scheme, the "specific conduct" under Hughey includes losses resulting from the overall scheme. See United States v. Manzer, 69 F.3d 222, 229-230 (8th Cir. 1995); United States v. Stouffer, 986 F.2d 916, 928-29 (5th Cir. 1993); United States v. Turino, 978 F.2d 315, 317-19 (7th Cir. 1992). Other circuits hold that the "specific conduct" is only the particular use of the mails described in a count of conviction, and that "[a]cts other than the particular mailing described in a count of conviction, even when committed during the course of or in furtherance of the same fraudulent scheme, do not state independent 'offenses of conviction.'" United States v. Jewett, 978 F.2d 248, 251-52 (6th Cir. 1992); accord United States v. Cronin, 990 F.2d 663, 666 (1st Cir. 1993); United States v. Seligsohn, 981 F.2d 1418, 1421 (3rd Cir. 1992); United States v. Stone,

⁴ Congress subsequently enacted the Crime Control Act of 1990, which limited Hughey in two respects: (1) it authorized courts to order restitution in an amount agreed to by the parties in a plea agreement even if that amount exceeds the amount charged in the indictment; and (2) when the subject offense involves a scheme, conspiracy, or pattern of criminal activity, restitution may be awarded to any person who is directly harmed by the defendant's course of criminal conduct. 18 U.S.C. § 3663(a)(2) and (3).

948 F.2d 700-703-04 (11th Cir. 1991); United States v. Sharp, 941 F.2d 811, 814-15 (9th Cir. 1991).

The Tenth Circuit has not officially adopted either view. However, in an unpublished opinion entered in a mail fraud case, the Court affirmed a restitution order which was not limited to the amount of loss associated with the particular mailings identified in the counts to which the defendant pled guilty. United States v. McAlpine, No. 95-3177, 1996 WL 705220 at *2 (10th Cir. Dec. 9, 1996). The Court in McAlpine distinguished this case from the one which faced the Court in United States v. Wainwright, 938 F.2d 1096 (10th Cir. 1991). In Wainwright, two defendants were charged with bank fraud in a seven-count indictment accusing them of devising a scheme to illegally obtain funds from six different banks. Wainwright entered a plea of guilty to count 7 of the indictment, which alleged that he and a co-defendant executed a scheme to defraud the Mid-American Bank. Id. at 1097. Count 7 covered only the scheme to defraud Mid-American Bank. Id. n. 1. The district court ordered restitution for one-half the losses suffered by all the banks named in the indictment, including the six dismissed counts. Id. at 1097. On appeal, citing Hughey, the Tenth Circuit held that the defendant could be ordered to pay restitution only for the loss suffered by Mid-American Bank because the other losses stemmed from "conduct unrelated to the offense of conviction." Id. at 1098. Notwithstanding other circuits' interpretation of Wainwright to support their narrow view, see United States v. DeSalvo, 41 F.3d 505, 514-15 (9th Cir. 1994); Cronin, 990 F.2d at 666, the Court in McAlpine reasoned that Wainwright pled guilty to fraud only of the Mid-American Bank, and that count 7 was a stand-alone count. McAlpine, 1996 WL 705220 at *3. The Court concluded that "Wainwright does not limit restitution to the amount involved in the single mailing in this mail fraud case in which the scheme charged is broader." Id.

After carefully considering the various decisions comprising the circuits' split of opinion on this issue, the Court adopts as sound the McAlpine court's rationale that restitution in a wire and mail fraud case such as the instant case should not be limited to the single wiring referenced in the count to which a defendant pleads guilty when the overall scheme charged is much broader. The Court finds that the reasoning espoused by the Fifth, Seventh and Eighth Circuits represents the better view and is more in keeping with the goal of the VWPA "to ensure that the Federal Government does all that is possible within limits of available resources to assist victims ... without infringing on the constitutional rights of the defendant." Hughey, 495 U.S. at 420 (quoting 18 U.S.C. § 1512 note (1988)). The Court agrees with the Fifth Circuit that those decisions limiting restitution to single mailings are unpersuasive "because they unjustifiably expand Hughey's holding—that the VWPA prohibits restitution for the loss caused by an offense for which the defendant was not convicted—by limiting restitution to the loss caused by the particular acts described in the counts of conviction." Stouffer, 986 F.2d at 929 (citation omitted). See also United States v. Bailey, 975 F.2d 1028, 1033 (4th Cir.1992) (stating that "Hughey should be read narrowly to apply only when the restitution award clearly encompasses ... an offense for which the defendant was not convicted").

Therefore, the Court concludes that the restitution order in this case was proper and in accord with Hughey, because it was based on the loss caused by "conduct underlying the offense of conviction," i.e., the wire and mail fraud scheme incorporated by reference in count 22. Thus, defense counsel did not err in failing to dispute the amount of restitution based on Hughey.

Defendant also claims that the restitution order is illegal because the Court did not recite that it considered the factors set out in 18 U.S.C. § 3664(a), which provides:

The court, in determining whether to order restitution under section 3579 of this title and the amount of such restitution, shall consider the amount of the loss sustained by any victim as a result of the offense, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate.

It is well-settled, however, that a sentencing court need not recite its specific factual findings regarding a defendant's ability to pay restitution and the other factors it considers in ordering restitution. United States v. Gabriele, 24 F.3d 68, 73 (10th Cir. 1994); United States v. Rogat, 924 F.2d 983, 986 (10th Cir. 1991). It is sufficient if the appropriate factors are detailed in the presentence report that the district court has adopted, or such consideration is otherwise implicit in the record. United States v. Williams, 996 F.2d 231, 233 (10th Cir. 1993); United States v. Savoie, 985 F.2d 612, 618 (1st Cir. 1993) (open court findings unnecessary). Defendant testified at the sentencing hearing that he had been furnished with a copy of the PSR and agreed that it was essentially complete and accurate. (Tr. of Sent. Hr'g at 30). The government presented evidence showing the net amount of losses relating to 921 investors in the fraudulent distributorships. This evidence included the testimony of a securities investigator for the Oklahoma Department of Securities who examined the bank accounts of companies operated by Defendant and his co-defendants. Thereafter, defense counsel and the Assistant U.S. Attorney stipulated to the amount of loss with respect to Defendant (Tr. of Sent. Hr'g at 29), and the Court ordered that Defendant pay a proportionate share of that loss as restitution. Therefore, notwithstanding the lack of a specific reference to § 3664 at sentencing, the Court's consideration of the factors enunciated therein is implicit in the record.

Finally, Defendant argues the Court failed to make a determination of his ability to make

restitution. Again, a sentencing court need not make specific findings as to a defendant's ability to pay provided sufficient information is made available to and is considered by the court. Rogat, 924 F.2d at 986. "A restitution order will be upheld if the evidence indicates a defendant has some assets or earning potential and thus possibly may be able to pay the amount ordered." Id. at 985. Restitution may be ordered despite a defendant's present indigency. Id.

In the instant case, the PSR and the sentencing memorandum filed by defense counsel adequately spelled out Defendant's financial condition, and counsel argued at sentencing that Defendant was financially unable to pay any restitution. (Tr. of Sent. Hr'g at 40-41). While the restitution figure of \$1,997,000, representing Defendant's share of the investors' total loss, is a large sum of money, Defendant has presented nothing to indicate that the Court abused its discretion in imposing restitution. Along this line, the Court notes that prior to his sentencing in the instant case the Fifth Circuit affirmed Defendant's conviction and sentence, including restitution in excess of \$5 million, which was imposed notwithstanding Defendant's similar financial condition.⁵ Therefore, the Court concludes that Defendant has failed to demonstrate that the restitution imposed here was excessive or that counsel erred in failing to appeal this issue. Thus, Defendant has not shown cause sufficient to overcome the procedural bar.

The only other avenue by which Defendant can have his claim of excessive restitution reviewed is by showing that a "fundamental miscarriage of justice" will result if the procedural bar is invoked. This exception applies "where a constitutional violation has probably resulted in the conviction of one who is actually innocent." Murray v. Carrier, 477 U.S. 478, 496 (1986). Here,

⁵ Although Defendant argued on appeal of his Texas judgment that his sentence was excessive, his arguments apparently focused on the alleged excessive imprisonment as the appellate decision did not address any claim of excessive restitution. Helms, 897 F.2d at 1299.

Defendant does not allege that he is actually innocent of the crime to which he pled guilty (i.e., mail and wire fraud); he claims only that the amount of restitution imposed is excessive. Thus, Defendant does not meet the "actual innocence" exception to the procedural bar.

Accordingly, because Defendant has not shown cause for his failure to raise his claims concerning restitution on direct appeal or prejudice resulting therefrom, or that a miscarriage of justice would result if the issues are not reached on the merits, the Court is procedurally barred from reaching the claims relating to restitution.

B. Ineffective assistance of counsel claim.

In his memorandum, Defendant states that his counsel was ineffective for failing to:

1. Object to errors in the PSR;
2. Argue for Defendant's rights under § 3664 statute;
3. Present testimony in mitigation of facts presented to support Defendant's dire financial condition;
4. Argue the point of restitution for specific conduct under Hughey.

(#100 at 14).⁶ As noted above, to establish ineffective assistance of counsel a defendant must show that his counsel's performance was deficient and that the deficient performance was prejudicial.

Strickland v. Washington, 466 U.S. 668, 687 (1984); Osborn v. Shillinger, 997 F.2d 1324, 1328

⁶In his memorandum, Defendant also argues that he has been discriminated against because he was indigent and not able to choose his own attorney. (#100 at 9). Clearly, an indigent Defendant does not have a right to appointed counsel of his choice, and the purpose of the Sixth Amendment is to "guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers." Wheat v. United States, 486 U.S. 153, 159 (1988); see United States v. Mendoza-Salgado, 964 F.2d 993, 1014-16 (10th Cir.1992). Therefore, this argument is without merit.

(10th Cir. 1993). A defendant can establish the first prong by showing that counsel performed below the level expected from a reasonably competent attorney in criminal cases. Strickland, 466 U.S. at 687-88. There is a "strong presumption that counsel's conduct falls within the range of reasonable professional assistance." Id. at 688. In making this determination, a court must "judge . . . [a] counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690. Moreover, review of counsel's performance must be highly deferential. "[I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Id. at 689.

To establish the second prong, a defendant must show that this deficient performance prejudiced the defense, to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. See also Lockhart v. Fretwell, 506 U.S. 364, 369-70 (1993). In the context of a guilty plea, the "prejudice" requirement focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process, and, to establish "prejudice," the defendant must show that there is a "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Addressing the first prong of the Strickland analysis, the Court concludes that Defendant has failed to demonstrate that defense counsel's representation at sentencing fell outside the range of reasonable professional assistance. Counsel filed a 13-page sentencing memorandum in which he specifically argued that restitution was improper in this case because of Defendant's financial situation. (#81 at 12-13). At the sentencing proceeding, defense counsel argued extensively for

mitigation, not only as to restitution but also as to any term of imprisonment which the Court might impose. (Tr. of Sent. Hr'g at 35-41). The Court has already considered Defendant's claims that restitution is excessive and found them to be without merit. Therefore, based on its review of counsel's overall performance at sentencing, the Court concludes that defense counsel's representation clearly fell "within the range of reasonable professional assistance" expected of attorneys in criminal cases.

Moreover, even were the Court to find counsel's performance deficient, Defendant would not be entitled to relief because his allegations are insufficient to satisfy the Strickland requirement of "prejudice." Defendant does not allege in his § 2255 motion that, had counsel not made the alleged errors at sentencing, he would have pleaded not guilty and insisted on going to trial. Defendant does not allege that his guilty plea was involuntary, nor does Defendant claim that he placed particular emphasis on the restitution issue in deciding whether or not to plead guilty. Indeed, Defendant's arguments concerning restitution would seem to apply not only to the sentence imposed pursuant to his guilty plea but also to any sentence he would have received had he gone to trial and been convicted.

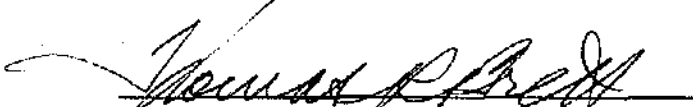
Therefore, because Defendant in this case fails to satisfy either prong of the Strickland test, the Court concludes that he has not established ineffective assistance of counsel, and his motion pursuant to § 2255 should be denied without an evidentiary hearing. See Hill v. Lockhart, 474 U.S. at 60.

CONCLUSION

Defendant's claim of excessive restitution is procedurally barred. Defendant's claim of ineffective assistance of counsel is without merit. Therefore, the Court concludes that Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 should be denied.

ACCORDINGLY, ~~IT IS~~ HEREBY ORDERED that Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (#98) is denied.

SO ORDERED ~~THIS~~ 14th day of Sept, 1998.


THOMAS R. BRETT, Senior Judge
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,

Plaintiff

v.

Wilbur Franklin Garst, Jr.

Defendant

ENTERED ON DOCKET

DATE SEP 16 1998

Case No.: 97-CR-136-02-H ✓

FILED

SEP 15 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER REVOKING PROBATION

Now on this 25th day of August 1998, this cause comes on for sentencing, concerning allegations that the defendant violated conditions of probation as set out in the Petition on Probation filed July 22, 1998. The defendant is present in person and represented by counsel, Randal D. Morley, the Government by Kenneth P. Snoke, Assistant U.S. Attorney, and the United States Probation Office is represented by Frank M. Coffman.

On May 28, 1998, Garst appeared for sentencing after pleading guilty to Interstate Travel in Aid of Racketeering and Aiding and Abetting, a violation of 18 U.S.C. § 1952(a)(3) and 18 U.S.C. § 2. Garst was sentenced to a three (3) year term of probation. He began serving his term of probation on May 28, 1998.

On July 22, 1998, a petition was filed in the Northern District of Oklahoma alleging that Garst violated conditions of his probation. On August 25, 1998, the defendant appeared before the Honorable Sven Erik Holmes for a Revocation and

Sentencing Hearing on the violations listed in the Petition on Probation filed July 22, 1998. The Court found that Garst had violated the conditions of probation as alleged in the Petition on Probation.


As a result of the Revocation Hearing, the Court revokes the defendant's probation. Pursuant to the Sentencing Reform Act of 1984, the Court finds that since the offense of conviction occurred after November 1, 1987, that Chapter Seven of the U.S. Sentencing Commission Guidelines is applicable. Further, the Court finds that the violations of probation constitute Grade C violations in accordance with USSG § 7B1.1(a)(3), and that the defendant's original Criminal History Category of I is applicable for determining the imprisonment range. In addition, the Court finds that Grade C violations and a Criminal History Category of I establishes a revocation imprisonment range of three (3) to nine (9) months, in accordance with USSG § 7B1.4(a) and 18 U.S.C. § 3565(a)(2). In consideration of these findings and pursuant to U.S. v. Lee, 957 F 2d 770 (10th Cir., 1992) cert. denied, 113 S. Ct. 475 (1992), in which the Circuit determined that the policy statements in Chapter Seven were not mandatory, but must be considered by the Court, the following sentence is ordered:

It is the judgment of the Court that the defendant, Wilbur Franklin Garst, is hereby committed to the custody of the U.S. Bureau of Prisons to be imprisoned for a term of nine (9) months. The defendant shall serve a two (2) year term of supervised release after his period of incarceration. The previous order of a

\$100.00 fine remains in effect and a part of this judgment. The standard conditions of Supervised Release are imposed in addition to the following special conditions:

1. The defendant shall successfully participate in a program of testing and treatment (to include inpatient, if necessary) for drug and alcohol abuse, as directed by the Probation Officer.
2. The defendant shall perform 200 hours of community service at the Tulsa Volunteer Center or as directed by the Probation Officer.
3. The defendant shall abstain from the use of alcohol and/or other intoxicants.

The defendant shall voluntarily surrender to the Federal Bureau of Prisons on September 24, 1998, at 12:00 p.m..


The Honorable Sven Erik Holmes
United States District Judge

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

FILED

SEP 11 1998

UNITED STATES OF AMERICA

Phil Lombardi, Clerk
U.S. DISTRICT COURT

v.

Case Number 97-CR-171-016-C

LINDA BEAR
Defendant.

ENTERED ON DOCKET

DATE 9/15/98

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

The defendant, LINDA BEAR, was represented by C.W. Hack.

On motion of the United States the court has dismissed Counts 1 & 12 of the Third Superseding Indictment.

The defendant pleaded guilty to Count 1 of the Information, May 21, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 USC 856(a)(2)	Maintaining a Place for the Purpose of Manufacturing a Controlled Substance	2/28/97	1

As pronounced on September 3, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 10th day of Sept., 1998.



The Honorable H. Dale Cook
United States District Judge

Defendant's SSN: 446-66-4985

Defendant's Date of Birth: 9/2/60

Defendant's mailing address: 702 S. Chestnut, Bristow OK 74010

Defendant's residence address: Tulsa County Jail, 500 S. Denver, Tulsa OK 74103

United States District Court
Northern District of Oklahoma } SS
I hereby certify that the foregoing
is a true copy of the original on file
in this court.

Phil Lombardi, Clerk
By Dee McCullough
Deputy

Defendant: LINDA BEAR
Case Number: 97-CR-171-016-C

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 46 months.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be placed in a facility equipped to provide Comprehensive Substance Abuse Treatment during her period of incarceration.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: LINDA BEAR
Case Number: 97-CR-171-016-C

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: LINDA BEAR
Case Number: 97-CR-171-016-C

FINE

The defendant shall pay a fine of \$ 1,000, as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: LINDA BEAR
Case Number: 97-CR-171-016-C

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	23
Criminal History Category:	I
Imprisonment Range:	46 months to 57 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 10,000 to \$ 500,000
Restitution:	\$ n/a

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

BJs

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

FILED

SEP 11 1998

UNITED STATES OF AMERICA

v.

Case Number 97-CR-124-004-C
Phil Lombardi, Clerk
DISTRICT COURTSHAYNA ELAINE JOHNSON
Defendant.

ENTERED ON DOCKET

DATE 9/15/98

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

The defendant, SHAYNA ELAINE JOHNSON, was represented by Stephen Greubel.

On motion of the United States the court has dismissed Count 3 of the Superseding Indictment. The defendant has been found not guilty on Count 2 of the Superseding Indictment and is discharged as to such count. IT IS ORDERED that the Defendant is acquitted and discharged, and any bond is exonerated. The defendant was found guilty as to Counts 1 & 4 of the Superseding Indictment on March 4, 1998. Pursuant to the order of the Court, Count 5 was severed from the Superseding Indictment and the defendant pleaded guilty to Count 5 of the Superseding Indictment, June 22, 1998. Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 371	Conspiracy	7/1/97	1
18 USC 472 & 2(a)	Uttering Counterfeit Obligations and Securities; Aiding and Abetting	6/8/97	4
18 USC 1344(1)	Bank Fraud	2/12/97	5

As pronounced on September 3, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 300, for Counts 1, 4 & 5 of the Superseding Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 10th day of Sept., 1998.

[Signature]
The Honorable H. Dale [Signature]
United States District Court
Northern District of Oklahoma

Defendant's SSN: 441-92-3963

Defendant's Date of Birth: 7/6/72

Defendant's residence and mailing address: 411 W. Gore, Lawton OK 73501

I hereby certify that the foregoing
is a true copy of the original on file
in this court.

Phil Lombardi, Clerk
By *[Signature]*
Deputy

Defendant: SHAYNA ELAINE JOHNSON
Case Number: 97-CR-124-001-C

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 6 months, as to each of Counts 1, 4 & 5, said terms to run concurrently, each with the other.

The Court makes the following recommendations to the Bureau of Prisons: that the Bureau of Prisons designate a halfway house as the place of confinement.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 9:00 a.m. on October 5, 1998.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: SHAYNA ELAINE JOHNSON
Case Number: 97-CR-124-001-C

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years, as to each of Counts 1, 4 & 5, said terms to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: SHAYNA ELAINE JOHNSON
Case Number: 97-CR-124-001-C

RESTITUTION AND FORFEITURE**RESTITUTION**

The defendant shall make restitution in the total amount of \$1,528.87. Interest on restitution is waived by the Court.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Southern Hills Marriott Attn: Parvez Siddikqi 1902 E. 71st Street Tulsa OK 74136	171.46
Jack In The Box Attn: Michelle Drumright 1405 N. Central Expressway Plano TX 75074	100.00
First National Bank & Trust Attn: Teresa Fleming 121 S. Main Street Broken Arrow OK 74012	1,257.41

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: SHAYNA ELAINE JOHNSON
Case Number: 97-CR-124-001-C

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	10	
Criminal History Category:	I	
Imprisonment Range:	6 months to 12 months	Cts. 1, 4 & 5
Supervised Release Range:	2 to 3 years	Cts. 1 & 4
	3 to 5 years	Ct. 5
Fine Range:	\$ 2,000 to \$ 20,000	Cts. 1, 4 & 5
Restitution:	\$ 1,528.87	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

FILED

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

SEP 11 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-171-014-C

TRACY SCOTT WALLACE
 Defendant.

ENTERED ON DOCKETDATE 9/15/98

JUDGMENT IN A CRIMINAL CASE
 (For Offenses Committed On or After November 1, 1987)

The defendant, TRACY SCOTT WALLACE, was represented by John Echols.

On motion of the United States the court has dismissed Count 1 of the Third Superseding Indictment.

The defendant pleaded guilty to Count 1 of the Information, May 21, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:


<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21 USC 841(a)(1)	Manufacturing and Distribution of a Controlled Substance	12/31/97	1

As pronounced on September 3, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

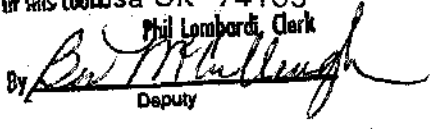
Signed this the 10 day of Sept., 1998.


 The Honorable H. Dale Cook
 United States District Judge

Defendant's SSN: 448-66-6366

Defendant's Date of Birth: 4/4/64

Defendant's residence and mailing address: c/o Tulsa County Jail, 500 S. Denver

United States District Court
 Northern District of Oklahoma } ss
 I hereby certify that the foregoing
 is a true copy of the original on file
 in this court. Tulsa OK 74103
 Phil Lombardi, Clerk
 By 
 Deputy

Defendant: TRACY SCOTT WALLACE
Case Number: 97-CR-171-014-C

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 120 months.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be placed in a facility that is equipped to provide Comprehensive Substance Abuse Treatment during his period of incarceration that is as close as possible to Tulsa, Oklahoma.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: TRACY SCOTT WALLACE
Case Number: 97-CR-171-014-C

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of five (5) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: TRACY SCOTT WALLACE
Case Number: 97-CR-171-014-C

FINE

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 3,000, as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: TRACY SCOTT WALLACE
Case Number: 97-CR-171-014-C

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	31
Criminal History Category:	I
Imprisonment Range:	120 months to 135 months
Supervised Release Range:	5 years
Fine Range:	\$ 15,000 to \$ 4,000,000
Restitution:	\$ n/a

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

BJs

2

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL JAFFAR MOHAMMAD,

Defendant.

No. 98-CR-72-K

ENTERED ON DOCKET
DATE 9-10-98

FILED
1-1-99

ORDER

Phil L. Lofgren, Clerk
U.S. District Court

Now on this 9 day of September, 1998 this cause comes on to be heard in the matter of the plaintiff's Motion for Leave to Dismiss, without prejudice, the Indictment against defendant Michael Jaffar Mohammad in the above styled cause. The Court finds that said request ought to be granted and the Indictment against defendant Michael Jaffar Mohammad is dismissed, without prejudice.

IT IS SO ORDERED.


TERRY C. KEEN
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCK.
DATE 9-10-98

UNITED STATES OF AMERICA,

Plaintiff,

v.

AARON RYAN TOTANI,

Defendant.

No. 98-CR-72-K

FILED

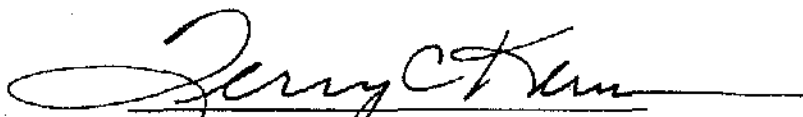
1-7-98

ORDER

FILED
U.S. DISTRICT COURT
N.D. OKLAHOMA

Now on this 9 day of September, 1998 this cause comes on to be heard in the matter of the plaintiff's Motion for Leave to Dismiss, without prejudice, the Indictment against defendant Aaron Ryan Totani in the above styled cause. The Court finds that said request ought to be granted and the Indictment against defendant Aaron Ryan Totani is dismissed, without prejudice.

IT IS SO ORDERED.


TERRY C. KEEN
United States District Judge

ENTERED ON DOCKET

DATE 9-10-98

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRISOPHER ROBERT SANDERS,

Defendant.

No. 98-CR-72-K

FILED

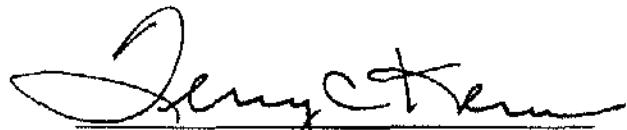
SEP 11 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

Now on this 9 day of September, 1998 this cause comes on to be heard in the matter of the plaintiff's Motion for Leave to Dismiss, without prejudice, the Indictment against defendant Christopher Robert Sanders in the above styled cause. The Court finds that said request ought to be granted and the Indictment against defendant Christopher Robert Sanders is dismissed, without prejudice.

IT IS SO ORDERED.



TERRY C. KERN
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES R. CAMPBELL,

Defendant.

ENTERED ON DOCKET

DATE SEP 9 1998

No. 96-CR-86-01-K
97-CV-1001-K

FILED
SEP - 8 1998


Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDGMENT

This matter came before the Court upon Defendant's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Plaintiff and against Defendant.

SO ORDERED THIS 8 day of September, 1998.


TERRY C. KERN, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE SEP - 9 1998

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES R. CAMPBELL,

Defendant.

No. 96-CR-86-01-K ✓
97-CV-1001-K

FILED

SEP - 8 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

Before the Court is the *pro se* Defendant Charles R. Campbell's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. (Docket #7). The government has filed its response (#9), to which Defendant has filed a reply (#10). After reviewing the entire record in this case, the Court has determined that an evidentiary hearing is not necessary and that the motion pursuant to § 2255 lacks merit and should be denied.

BACKGROUND

On November 12, 1996, Defendant pleaded guilty to an Information charging him with mail fraud in violation of 18 U.S.C. § 1341. The pertinent facts, summarized here, are taken in large part from the Presentence Report ("PSR") prepared by the U.S. Probation Office. In 1992, Defendant took over an existing Oklahoma industrial supply company, Colwell Supply and Equipment Co., Inc. ("Colwell"). The company was not profitable, and in October of 1993 Defendant sought to increase cash flow by entering into factoring agreements with Regent Finance Corporation ("Regent"), located in Tulsa. Under this arrangement, Regent purchased title to

Colwell's accounts receivable for an immediate payment to Colwell of 75% of their face value. Regent then collected the face amount of the invoices directly from the customers and paid Colwell the remaining 25% owed, keeping for itself a 4% financing fee.

Beginning in November, 1993, Defendant put into motion a scheme to defraud Regent by submitting phony invoices. Defendant informed Regent that Colwell was supplying materials for a confidential division of American Airlines known as Special Project Services ("SPS"), which was allegedly responsible for renovating the airline's plating shops in Dallas and Tulsa. In fact, SPS did not exist and Colwell made no sales to SPS. Defendant induced an employee of American Airlines to confirm to Regent that Colwell was involved in supplying inventory to American Airlines. Defendant also created two fictitious American Airlines employees: one to act as SPS project manager with authority to approve invoices, and a second employee who allegedly had signature authority over SPS's bank accounts.

To perpetuate his scheme, Defendant opened a post office box in Tulsa to front as SPS's mailing address and later moved SPS to an office in Oklahoma City. Defendant recruited Ruth Ann Paul to operate the Oklahoma City office and pose as an American Airlines employee. Defendant generated phony American Airlines invoices in Tulsa and had them sent to Regent from the Oklahoma City SPS office. After Colwell collected from Regent 75% of the invoices' face value, Defendant would transfer the money to an SPS bank account he controlled and pay Regent on the invoices. Before the scheme unraveled, Defendant had induced Regent to finance over \$16 million in fraudulent invoices, causing a net loss to Regent of \$4,542,173.53. As a result of a civil suit filed by Regent against Colwell, numerous assets of Defendant were liquidated, reducing Regent's unreimbursed loss to \$3,891,068.10.

In the Plea Agreement signed by Defendant, he acknowledged committing the fraud and agreed that for sentencing purposes the loss involved was more than \$2.5 million but less than \$5 million. (Plea Agreement at 9). The government agreed to recommend a reduction in offense level for acceptance of responsibility and to refrain from initiating any further prosecution based on information then known to the government.

The PSR prepared by the Probation Office in accordance with the United States Sentencing Guidelines (1996) ("U.S.S.G." or "Guidelines") calculated a total offense level of 20 and a criminal history category of I, which resulted in a Guidelines range for imprisonment of 33 to 41 months. In determining the offense level, the Probation Officer included: a two point increase pursuant to U.S.S.G. § 2F1.1(b)(2)(A) because the offense required more than minimal planning; a two point increase pursuant to § 3B1.1(c) for role in the offense as organizer and leader; and a three point decrease for acceptance of responsibility. Neither side objected to the PSR.

After a sentencing hearing, the Court sentenced Defendant to 36 months imprisonment, to be followed by three (3) years supervised release. The Court waived the imposition of a fine but ordered Defendant to pay restitution of \$50,000 for the benefit of Regent. Judgment against Defendant was entered on November 21, 1996. (#4). Defendant did not appeal.

On November 10, 1997, Defendant filed the instant motion pursuant to § 2255 claiming:

1. A downward departure pursuant to § 2F1.1(b)(1)(N) was warranted because the loss as otherwise determined overstates the seriousness of the offense; and
2. The Court improperly "double-counted" in imposing enhancements under both § 3B1.1(c) for role as an organizer and § 2F1.1(b)(2)(A) for more than minimal planning.

The government asserts that Defendant is procedurally barred from raising his claims because he failed to file a direct appeal. Alternatively, the government contends that Defendant's claims are without merit. In his reply, Defendant alleges that he did not raise the alleged sentencing errors at trial or on appeal because of ineffective assistance of counsel.

ANALYSIS

Defendant concedes that he did not file a direct appeal, but states that he was relying on "[a]ttorney advice of no need to appeal." (#7 at 4). It is well settled that "[s]ection 2255 motions are not available to test the legality of matters which should have been raised on direct appeal." United States v. Warner, 23 F.3d 287, 291 (10th Cir. 1994) (citation omitted). Consequently, a defendant may not assert issues which were not raised in his direct appeal unless he establishes cause for his default and prejudice resulting therefrom, or can show that a fundamental miscarriage of justice will occur if his claim is not addressed. United States v. Cook, 45 F.3d 388, 392 (10th Cir. 1995). The procedural default rules developed in the context of habeas corpus cases apply with equal force in § 2255 cases. United States v. Frady, 456 U.S. 152, 166-69 n. 15 (1982).

The "cause" standard requires a defendant to show that some objective factor external to the defense impeded his ability to raise an issue on direct appeal. See Murray v. Carrier, 477 U.S. 478, 488 (1986). Examples of such external factors include the discovery of new evidence or a change in the law. Id. Ineffective assistance of counsel is another example of an external factor that may constitute "cause" excusing a procedural default. Cook, 45 F.3d at 392. As for prejudice, a defendant must show "'actual prejudice' resulting from the errors of which he complains." Frady, 456 U.S. at 168 (1982). The "fundamental miscarriage of justice" exception requires a defendant to

demonstrate that he is "actually innocent" of the crime of which he was convicted. McCleskey v. Zant, 499 U.S. 467, 494 (1991).

In his reply to the government's response raising the procedural bar, Defendant alleges his attorney erred by failing to object to the PSR or file an appeal. Therefore, the Court examines whether Defendant's allegations of ineffective assistance of counsel constitute "cause" sufficient to overcome the procedural bar as to his claims of sentencing errors.

To establish ineffective assistance of counsel a defendant must show that his counsel's performance was deficient and that the deficient performance was prejudicial. Strickland v. Washington, 466 U.S. 668, 687 (1984). Although the Strickland test was formulated in the context of evaluating a claim of ineffective assistance of trial counsel, the same test is applied in assessing the ineffectiveness of appellate counsel. Cook, 45 F.3d at 392.

Because the procedural bar is imposed due to Defendant's failure to raise his claims on direct appeal, the Court must examine the merits of the issues omitted upon appeal. Id. If the omitted issues are without merit, counsel's failure to raise them does not amount to constitutionally ineffective assistance of counsel. Id. at 393.

Defendant first claims that the Court should have departed downward from the Guidelines range at sentencing because his scheme was so fraudulent that no one should have taken it seriously. Pursuant to § 2F1.1(b)(1) of the Guidelines, the base offense level for fraud, deceit, forgeries, and altered or counterfeit instruments is determined according to the amount of loss (actual or intended) involved. In the Plea Agreement, Defendant stipulated that the loss involved was between \$2.5 million and \$5 million, resulting in an offense level of 19. Defendant argues that his offense level was subject to downward departure pursuant to § 2F1.1, App. Note 10,

which provides in relevant part:

In a few instances, the loss determined under subsection (b)(1) may overstate the seriousness of the offense. This may occur, for example, where a defendant attempted to negotiate an instrument that was so obviously fraudulent that no one would seriously consider honoring it. In such cases, a downward departure may be warranted.

In this case, the loss determined pursuant to subsection (b)(1) represented the actual monetary loss suffered by Regent as the victim of Defendant's elaborate and fraudulent scheme. It seems imminently logical under the framework of the Guidelines that an offense level determined according to the victim's actual loss would equate, rather than overstate, the seriousness of the offense. In contrast, the commentary cited by Defendant seems to envision an attempted fraud that is so transparent as to justify a downward departure from the dollar amount of the intended amount of loss. A downward departure might also be justified when the defendant was not the sole cause of the loss, as in a conspiracy case. See United States v. Arutunoff, 1 F.3d 1112, 1120 (10th Cir. 1993); United States v. Shattuck, 961 F.2d 1012, 1017 (1st Cir. 1992). In this case, it is uncontroverted that Defendant was the sole orchestrator of this fraud, which directly resulted in Regent's losses.

Defendant argues that Regent somehow contributed to its loss by not immediately discovering the fraud; therefore, Defendant contends, Regent's actual loss overstates the seriousness of Defendant's offense. The Court finds this argument to be fundamentally unsound. Defendant pleaded guilty to this fraud and stipulated the amount of loss suffered by Regent. That Regent fell a victim to Defendant's scheme in no way mitigates the seriousness of his criminal behavior. The Court concludes that this is not one of the "few instances" contemplated by the

Guidelines in which downward departure is proper. Thus, defense counsel did not err in failing to raise this issue at sentencing or on appeal, and Defendant has failed to show "cause" sufficient to overcome the procedural bar with respect to this issue.

Defendant's second claim is also without merit. He argues that the Court erred at sentencing by increasing his offense level for both his role as an organizer (§ 3B1.1(c)) and for "more than minimal planning" (§ 2F1.1(b)(2)(A)). According to Defendant, this constitutes impermissible double counting because both provisions are based on the same conduct.

The Court of Appeals for the Tenth Circuit previously considered and rejected this argument. United States v. Smith, 13 F.3d 1421 (10th Cir.1994). In Smith, the Court held that the upward adjustments for "more than minimal planning" and for acting as an "organizer, leader, manager, or supervisor" may be applied in tandem without constituting impermissible double counting. Id. at 1429. In so holding, the Court adopted the reasoning of all other circuits, except the Sixth, that the adjustment for "more than minimal planning" distinguishes between relatively simple and more complicated crimes, while the adjustment for role in the offense addresses "the relative responsibilities of those involved in the commission of the offense, punishing those more harshly who assume a leadership role." Id. (quoting United States v. Wong, 3 F.3d 667, 672 (3rd Cir. 1993)). Thus, the Court properly imposed both upward adjustments, and Defendant's attorney did not err in failing to object to the adjustments at sentencing or on appeal.

In his reply brief, Defendant also contends that he was not the leader of the scheme; rather, Defendant argues that Regent, due to its lack of due diligence in investigating the phony invoices, was the leader and organizer. (#10 at unnumbered 5). This allegation is patently frivolous and abundantly contradicted by the record, including Defendant's admissions in his Petition to Enter

Plea of Guilty and the Plea Agreement. Defendant further argues that his offense did not involve more than minimal planning. Again, this allegation is amply rebutted by the elaborate charades Defendant set up to effectuate the fraud. Clearly, defense counsel did not err in failing to object to these sentencing adjustments, either singly or cumulatively, and Defendant has failed to demonstrate "cause" sufficient to overcome the procedural bar.


The only other avenue by which Defendant can have his claims reviewed is by showing that a "fundamental miscarriage of justice" will result if the procedural bar is invoked. This exception applies "in an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent." Murray v. Carrier, 477 U.S. at 496 (1986). Defendant does not claim that he is actually innocent of the charge to which he pled guilty. Therefore, his claims of sentencing errors are procedurally barred.

CONCLUSION

Defendant's claims are procedurally barred because he did not raise them on direct appeal and he has failed to demonstrate cause and prejudice, or a fundamental miscarriage of justice, sufficient to overcome the bar.

ACCORDINGLY, IT IS HEREBY ORDERED that Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (Docket #7) is **denied**.

SO ORDERED THIS 8 day of September, 1998.


TERRY C. KERN, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSE HERNANDEZ DELEON,

Defendant.

ENTERED ON DOCKET

DATE **SEP 9 1998**

No. 96-CR-27-K
(97-CV-768-K)

F I L E D

SEP 08 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

Before the Court is the *pro se* Defendant Jose Hernandez DeLeon's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. (Docket #56). In addition, Defendant also has filed a document entitled "Motion for Alien Deportation Improvements Act. H.R. 668 of 1995 (17) (20) (242)(h) of the Immigration and Naturalization Service Act. Tit. 8 U.S.C.A. (1252)(H) Title IV-Terrorist and Criminal Alien Removal and Exclusion. 438 Interior Repatriation, Program 2038" ("deportation motion") (#54). The government responded to both motions (#s 62 and 63), and Defendant filed a reply to the government's response to the § 2255 motion. (#64).

After reviewing the entire record in this case, the Court has determined that an evidentiary hearing is not necessary and that the motion pursuant to §2255 lacks merit and should be denied. Defendant's motion for alien deportation is also without merit and should be denied.

BACKGROUND

On February 15, 1996, Defendant and his wife Guadalupe Deleon, together with Cesar Martinez Deleon and Armando Saenz Regalado, were charged with one count of distributing marijuana in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. (#1). A superseding indictment was filed April 4, 1996 repeating the above-described charge as count one, and adding counts two

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and three which charged Cesar Martinez Deleon with using a telephone to facilitate the commission of felonies under the Controlled Substance Act, in violation of 21 U.S.C. § 843(b). (#32). On April 8, 1996, the United States Attorney filed an information against Defendant charging a prior felony conviction to enhance the range of punishment under 21 U.S.C. § 841(b) for the crime charged in the superseding indictment. (#35).

On May 17, 1996 Defendant pleaded guilty to count one of the superseding indictment pursuant to a plea agreement signed by Defendant, his retained attorney, and the Assistant U.S. Attorney. In his written petition to enter a plea of guilty, Defendant admitted to participating in the distribution of 40 pounds of marijuana in Tulsa on February 13, 1996. In the plea agreement, the parties stipulated *inter alia* that: (1) for purposes of guidelines sentencing, the readily provable quantity of marijuana was at least 2,000 pounds but less than 1,000 kilograms; (2) Defendant occupied a position of manager or supervisor of five or more persons and should receive a three-level upward adjustment pursuant to U.S.S.G. § 3B1.1(b); (3) the government would recommend a two-level reduction for acceptance of responsibility pursuant to § 3E1.1 and an additional one-level reduction pursuant to § 3E1.1(b)(2) (timely notification of intention to plead guilty); (4) no obstruction of justice occurred; and (5) the allegations of Defendant's prior conviction set forth in the enhancement Information were true and correct. (Plea Agreement at 8-9).

The plea agreement also provided that: "[t]he defendant knowingly and expressly waives the right to contest his conviction for the crimes enumerated in paragraph (A)(1) in any direct or collateral appeal or other post-conviction action, including any proceeding under 28 U.S.C. § 2255." (Plea Agreement at 3). At the conclusion of the plea inquiry hearing, the Court determined that Defendant entered his guilty plea freely and voluntarily.

The Presentence Report ("PSR") prepared by the U. S. Probation Office recommended a two-level increase for possession of a firearm pursuant to the United States Sentencing Guidelines ("U.S.S.G.") § 2D1.1(b). Defense counsel objected to this increase (#s 45 and 47), and after hearing arguments on this and other sentencing issues, the Court sustained Defendant's objection to the proposed adjustment for possession of a firearm and sentenced Defendant to 136 months imprisonment, to be followed by eight years supervised release, and imposed a fine of \$18,000. Judgment was entered against Defendant on August 21, 1996. (#50).

Defendant did not appeal. On June 13, 1997, Defendant filed the instant deportation motion (#54), and on August 21, 1997 he filed the motion pursuant to § 2255 (#56).

ANALYSIS

A. Deportation motion.

In this motion, Defendant cites the Criminal Aliens Deportations Act of 1995, H.R. 668, as allowing the deportation of nonviolent offenders prior to completion of their sentences and also requiring the Immigration and Naturalization Service ("INS") to initiate deportation proceedings immediately after the date of an alien's conviction rather than postponing them until completion of his sentence. Defendant concludes his motion by stating: "I would appreciate being advised of what remedies are available to me." (#54 at 2). He attaches his affidavit waiving his right to a deportation hearing and acknowledging the provisions of 8 U.S.C. § 1326(c) that if he were to attempt to reenter the U.S. after deportation, he would be incarcerated for the remainder of his sentence. Defendant also attaches copies of his sentence computation data and prison progress report.

The government responds that although Act H.R. 668 of 1995 passed the House of Representatives in February, 1995, it did not pass the Senate and did not become law. Further, the

government contends that Defendant is not entitled to deportation prior to completion of his sentence because the provision allowing for such early removals, 8 U.S.C. § 1231(a)(4)(B), applies only to prisoners who were convicted of a nonviolent offense, which is defined to exclude the "illicit trafficking in a controlled substance." Defendant was convicted of distribution of marijuana, and therefore the government asserts he is not eligible for removal and deportation under § 1231(a)(4)(B). Further, the government contends that even if Defendant were eligible for removal and deportation, the statute explicitly provides that no claim or cause may be asserted by a prisoner to compel his removal or consideration for deportation. 8 U.S.C. § 1231(a)(4)(D). Lastly, the government states that, although the INS has established an early release and deportation program for prisoners in state custody, no such program exists for federal prisoners. Defendant did not file a reply to the government's response.

After review of the applicable statutory authorities, the Court concludes that Defendant is not entitled to an immediate deportation hearing or to early release and deportation. Defendant is indeed a deportable alien because he was convicted of an offense involving a controlled substance. 8 U.S.C. § 1227(a)(2)(B). Section 1228(a)(1) states that the Attorney General shall provide for the availability of special removal proceedings at certain correctional facilities for criminal aliens "in a manner which assures expeditious removal following the end of the alien's incarceration for the underlying sentence." The statute further provides that it does not create any legally enforceable right. The government states that no such special program is currently in place for federal prisoners. After reviewing the statutory authority, the Court concludes that Defendant has no remedy to compel an early deportation hearing under § 1228.

Moreover, as the government points out, 18 U.S.C. § 1231(a)(4)(A) provides that the Attorney General may not deport an alien who is sentenced to imprisonment until the alien is released from imprisonment, with the exception of certain nonviolent offenders. Defendant, who was convicted of marijuana distribution, does not meet this exception. 18 U.S.C. § 1831(a)(4)(B). Therefore, Defendant is not entitled to early deportation prior to completion of his sentence. Accordingly, Defendant's deportation motion should be denied.

B. Motion pursuant to 28 U.S.C. § 2255.

Defendant raises three claims in his § 2255 motion:

1. The defendant had ineffective assistance of counsel.

Supporting facts: Defense counsel totally refused to investigate the case in general.

That there were witnesses that would have supported an alibi for the Defendant.

Along with testimony that the Defendant was never any type of leader (Drug Lord).

That Counsel was ineffective for allowing the Plea agreement to be breached.

2. The Defendant was coerced and threatened for the purpose of causing the Defendant to enter a change of plea.

Supporting facts: The Defendant was threaten [sic] by the Government, and his counsel, that if the Defendant didn't plea out in this case that the Government was going to fully prosecute the Defendant's wife. This and other threats, and promises were made to this Defendant for the purpose of coercing the Defendant to enter a change of plea.

3. The Government Breached the plea agreement, and the Defendant's sentence is illegal.

Supporting facts: The Government, through the Defendant's Counsel, made a number of threats, as well as promises that were used for the purpose of causing the Defendant to enter a change of plea. Which were later Breached.

(#56 at 5). In response, the government first discusses the doctrine of procedural bar, then asserts that Defendant knowingly and expressly waived his right to collateral review when he signed the Plea Agreement. Therefore, the government argues, Defendant is not allowed to raise ineffective assistance of counsel claims through a § 2255 motion. Alternatively, the government contends that Defendant's claims are without merit. The government attaches the affidavit of Defendant's attorney, Stanley D. Monroe, in support of its position that Defendant was neither denied effective assistance of counsel nor coerced to enter a guilty plea. In his reply, Defendant states that he has not waived his right to collateral review since the Bailey¹ case constitutes a change of policy or law.

1. *Waiver/Procedural Bar.*

The Court first addresses the government's defense that Defendant's claims are procedurally barred or are waived. It is well settled that "[s]ection 2255 motions are not available to test the legality of matters which should have been raised on direct appeal." United States v. Warner, 23 F.3d 287, 291 (10th Cir. 1994) (citation omitted). Consequently, a defendant may not assert issues which were not raised on direct appeal unless he establishes cause for his default and prejudice resulting therefrom, or can show that a fundamental miscarriage of justice will occur if his claim is not addressed. United States v. Allen, 16 F.3d 377, 378 (10th Cir. 1994) (failure to file

¹Bailey v. United States, 516 U.S. 137 (1995).

appeal); United States v. Cook, 45 F.3d 388, 392 (10th Cir. 1995) (failure to raise issues on appeal). The procedural default rules developed in the context of habeas corpus cases apply with equal force in § 2255 cases. United States v. Frady, 456 U.S. 152, 166-69 n. 15 (1982).

The "cause" standard requires a defendant to show that some objective factor external to the defense impeded his ability to raise an issue on direct appeal. See Murray v. Carrier, 477 U.S. 478, 488 (1986). Examples of such external factors include the discovery of new evidence or a change in the law. Id. Ineffective assistance of counsel is another example of an external factor that may constitute "cause" excusing a procedural default. Cook, 45 F.3d at 392. As for prejudice, a defendant must show "'actual prejudice' resulting from the errors of which he complains." United States v. Frady, 456 U.S. 152, 168 (1982). The "fundamental miscarriage of justice" exception requires a defendant to demonstrate that he is "actually innocent" of the crime of which he was convicted. McCleskey v. Zant, 499 U.S. 467, 494 (1991).

The plea agreement which Defendant, defense counsel and the Assistant U.S. Attorney signed includes an express waiver of Defendant's right to contest his conviction on appeal or post-conviction motion. At the Change of Plea hearing held on May 17, 1996, the Court inquired as to this limitation on the right to appeal. The Assistant U.S. Attorney stated that the provision limited Defendant's right to appeal the conviction, not the sentence, and Defendant indicated his agreement with this waiver. (Tr. of Change of Plea Hr'g at 13).

Generally, the provisions of lawful plea agreements are enforceable. United States v. Libretti, 38 F.3d 523, 529 (10th Cir. 1994), aff'd, 516 U.S. 29 (1995). The Tenth Circuit, in line with other circuits, has held that "[a] defendant's knowing and voluntary waiver of the statutory right to appeal his sentence is generally enforceable." United States v. Hernandez, 134 F.3d 1435, 1437 (10th Cir.

1998). The Tenth Circuit has not yet addressed the enforceability of a plea-bargained waiver of the statutory right to seek collateral review pursuant to § 2255. However, other circuits addressing this issue have held such waivers generally enforceable, but note that they may not always be effective to preclude collateral attack based on a claim of ineffective assistance of counsel. See, e.g., United States v. Wilkes, 20 F.3d 651, 653 (5th Cir. 1994); United States v. Abarca, 985 F.2d 1012, 1014 (9th Cir. 1992).

In this case, Defendant does not challenge the validity of the waiver; rather, Defendant asserts only that the Bailey decision constitutes a change of law, presumably justifying his failure to appeal. However, Defendant's reliance on Bailey is misplaced. That decision is simply not relevant to the claims raised by Defendant. In Bailey, the Supreme Court narrowly interpreted "use" of a firearm for purposes of 18 U.S.C. § 924(c) as requiring evidence that a defendant "actively employed," rather than merely possessed, the firearm. Here, Defendant was not charged pursuant to § 924(c). Instead, for sentencing purposes an adjustment pursuant to U.S.S.G. § 2D1.1(b) relating to possession of firearms was proposed. The Bailey decision does not encompass this sentencing adjustment, see Bailey, 516 U.S. at 149, and, in any event, the Court sustained defense counsel's objections to the increase. Moreover, the Supreme Court decided Bailey on December 6, 1995, over eight months before judgment was entered against Defendant on August 21, 1996. Thus, even were the decision relevant to Defendant's claims, it would not constitute "new law" justifying a failure to appeal.

Defendant also raises a substantive claim that his guilty plea resulted from coercion and threats. Defendant does not argue that his plea-bargained waiver of appellate and collateral attack rights is therefore invalid; however, construing Defendant's *pro se* motion liberally as required by Haines v. Kerner, 404 U.S. 519, 520 (1972), the Court examines whether Defendant's claims of

coercion are sufficient to render his guilty plea — and his waiver — invalid.

After carefully scrutinizing Defendant's allegations that he was coerced into pleading guilty, the Court concludes that they are wholly conclusory and not supported by the record or the plea agreement. The Court's lengthy colloquy with Defendant concerning his decision to plead guilty included the following exchange:

THE COURT: Mr. Jose DeLeon, understanding the nature of the charges, your right to a jury trial, and that you voluntarily waive such rights, knowing the effect and consequences of a plea of guilty, how do you plead to Count I of the Superseding indictment?

THE DEFENDANT: Guilty.

THE COURT: Is your plea of guilty and the waiver of your rights, made freely and voluntarily, and of your own free choice?

THE DEFENDANT: Yes.

THE COURT: Is your plea of guilty and the waivers of your rights, the result of any force or threats or pressures from anyone?

THE DEFENDANT: No.

THE COURT: Are you relying upon any representations or promises expressed or implied, which are not clearly and specifically stated in the plea Agreement dated May 17, 1996, and consisting of 14 pages?

DEFENDANT: No.

(Tr. of Change of Plea Hr'g at 27-28). The Court thereafter found that based upon his clear and unambiguous answers to its questions, Defendant was making his plea voluntarily and not out of

coercion. (Tr. of Change of Plea Hr'g at 28). "Solemn declarations in open court carry a strong presumption of verity." Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). In contrast to his sworn testimony at the guilty plea inquiry, Defendant's present allegations that defense counsel coerced him to plead guilty are conclusory and not persuasive. Defendant alleges that counsel told him that if he did not plead guilty, the government would prosecute Defendant's wife and possibly other family members. (#56 at 13). Defendant claims that this threat resulted from counsel's conflict of interest, in that counsel was "actively representing" and trying to protect Defendant's wife at Defendant's expense. (#56 at 14).

The record does not support Defendant's allegations. Initially, both Defendant and his wife, Guadalupe Deleon, were represented by attorney Paul Brunton. A few days after the government moved to resolve this potential conflict of interest in February, 1996 (#5) (shortly after charges were filed), Defendant retained new counsel, Stanley Monroe, while Brunton continued to represent Defendant's wife. Thus, Defendant's counsel did not represent Guadalupe Deleon during plea negotiations, and Defendant's claim of conflict of interest is unfounded. Further, the Assistant U.S. Attorney openly stated at Defendant's change of plea hearing that the government intended to dismiss the charge against Guadalupe Deleon because it had little evidence of her knowledge of the illegal drug activity. (Tr. of Change of Plea Hr'g at 25). Indeed, the government did move to dismiss charges against Guadalupe Deleon. (#41). Thus, Defendant's claims that he was coerced by defense counsel into pleading guilty or that counsel did not effectively represent him because of a conflict of interest are without merit.

Similarly, Defendant's claim that the government breached the plea agreement fails on several grounds. Defendant alleges that the government promised him that there would be no sentencing

adjustments other than those addressed in the plea agreement. (#56 at 17). Apparently, Defendant is referring to the proposed two-level upward adjustment for possession of firearms contained in the PSR. However, this adjustment was recommended by the U.S. Probation Officer, not the Assistant U.S. Attorney. Further, Defendant was told that the Court, and not the U.S. Attorney, had the final authority as to Defendant's sentence, and Defendant acknowledged his understanding of this point. (Tr. of Change of Plea Hr'g at 12-13). This precept is also clearly reflected in the plea agreement itself (Plea Agreement at 6-7). Moreover, in this case the Court did not adopt the Probation Officer's recommendation and did not impose the upward adjustment for possession of firearms. Therefore, the Court concludes Defendant's claim that the government breached its promise is without merit.

Therefore, the Court concludes that Defendant's guilty plea — and his waiver of his rights to appeal and to seek collateral review of his conviction — was voluntarily and knowingly made. Notwithstanding this finding, however, the Court declines to decide whether such waiver extends to Defendant's claims of ineffective assistance of counsel, because, as discussed below, such claims clearly are without merit.

2. *Ineffective assistance of counsel claims.*

In his § 2255 motion, Defendant enumerates the following grounds of ineffective assistance of counsel: (1) counsel failed to properly investigate the case in general; (2) counsel threatened Defendant and coerced him into entering a plea; (3) counsel was ineffective when he failed to properly move to have the two points involving possession of a firearm in connection with the distribution of controlled substances vacated according to Bailey; (4) counsel failed to properly object and prove that Defendant was not a manager or supervisor of criminal activities; and (5) counsel failed to subpoena

a known confidential informant who would have testified that the Defendant had little or no involvement in the drug related crimes.

As noted above, to establish ineffective assistance of counsel a defendant must show that his counsel's performance was deficient and that the deficient performance was prejudicial. Strickland v. Washington, 466 U.S. 668, 687 (1984); Osborn v. Shillinger, 997 F.2d 1324, 1328 (10th Cir. 1993). A defendant can establish the first prong by showing that counsel performed below the level expected from a reasonably competent attorney in criminal cases. Strickland, 466 U.S. at 687-88. There is a "strong presumption that counsel's conduct falls within the range of reasonable professional assistance." Id. at 688. In making this determination, a court must "judge . . . [a] counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690. Moreover, review of counsel's performance must be highly deferential. "[I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Id. at 689.

To establish the second prong, a defendant must show that this deficient performance prejudiced the defense, to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. See also Lockhart v. Fretwell, 506 U.S. 364, 369-70 (1993). In the context of a guilty plea, the "prejudice" requirement focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process, and, to establish "prejudice," the defendant must show that there is a "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The Court previously examined and found unpersuasive Defendant's claim that counsel threatened and coerced him into pleading guilty (ground #2). Likewise, Defendant's claim that counsel failed to move to vacate the two-level adjustment for possession of a firearm (ground #3) is without merit, as the Court accepted counsel's argument that this adjustment was improper.

Next, Defendant claims that counsel failed to investigate this case and that, if he had properly investigated, he would have discovered that Defendant had only a minor role in the offense and should not have stipulated to the three-point adjustment for role as a manager (ground #s 1 and 4). Defendant also alleges that the confidential informants could have told counsel of Defendant's alleged minimal participation in the drug distribution activities (ground #5).

While counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments. Strickland, 466 U.S. at 690. An attorney's decision not to interview witnesses and to rely on other sources of information, if made in the exercise of professional judgment, is not ineffective counsel. United States v. Glick, 710 F.2d 639, 644 (10th Cir. 1983).

The government has provided the affidavit of defense counsel Stanley Monroe, who states that he retained a private investigator to assist in the investigation of the case, and at no time did Defendant or other witnesses provide information suggesting an alibi or the identity of confidential informants who would have been helpful in mitigation. Counsel's zealous representation of Defendant is evidenced by his filing motions for discovery (#12) and to suppress evidence (#11), in addition to his objecting to certain provisions of the PSR. As to Defendant's role in the offense, Defendant himself testified that he was the manager or supervisor of the drug distribution activity and

that there were at least five persons, whom he named, involved. (Tr. of Change of Plea Hr'g at 26). Thus, the evidence supports the plea agreement's stipulation that Defendant was a manager of five or more persons and subject to a three-level increase for sentencing purposes. Therefore, counsel did not err in failing to object to this stipulation.

Moreover, the Court's review of the record establishes that the overall performance of Defendant's attorney was well within the wide range of professionally competent assistance. Therefore, the Court concludes that Defendant has failed to demonstrate ineffective assistance of counsel, and his motion pursuant to § 2255 should be denied without an evidentiary hearing. See Hill v. Lockhart, 474 U.S. at 60.

CONCLUSION

Defendant is not entitled to an immediate hearing on his deportation status or to early release and deportation; therefore, his deportation motion should be denied. Further, Defendant has failed to demonstrate: ineffective assistance of counsel, that his guilty plea was involuntary or that the government breached the plea agreement. Therefore, his motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 should be denied.

ACCORDINGLY, IT IS HEREBY ORDERED that:

1. Defendant's Motion for Alien Deportation Improvements Act. H.R. 668 of 1995 (17) (20) (242)(h) of the Immigration and Naturalization Service Act. Tit. 8 U.S.C.A. (1252)(H) Title IV-Terrorist and Criminal Alien Removal and Exclusion. 438 Interior Repatriation, Program 2038 (#54) is **denied**.
2. Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (#56) is **denied**.

SO ORDERED THIS 4th day of September, 1998.



TERRY C. KEEN, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
DATE SEP 9 1998

Plaintiff,

vs.

No. 96-CR-27-K
(97-CV-768-K)

Defendant.

FILED

SEP 08 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

This matter came before the Court upon Defendant's motion to vacate set aside or correct sentence pursuant to 28 U.S.C. § 2255. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Plaintiff and against Defendant.

SO ORDERED THIS 4th day of September, 1998.

TERRY C. KEHN, Chief Judge
UNITED STATES DISTRICT COURT

10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 4 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES NORWOOD HUTCHING,

Defendant.

No. 74-CR-74-K ✓
(98-CV-594-K)

ENTERED ON DOCKET

DATE 9-8-98

ORDER

On August 10, 1998, Defendant James Norwood Hutching filed a motion to vacate, set-aside or correct sentence pursuant to 28 U.S.C. § 2255 and a "Motion for This Court to Accept Tardy Motion Pursuant to 28 U.S.C. § 2255 and Rule 60(b)."

Defendant was convicted of a drug distribution offense and sentenced on July 26, 1974 to five (5) years imprisonment to be followed by five (5) years parole. On March 5, 1975, Defendant's conviction and sentence were affirmed on appeal. Defendant has not previously challenged his 1974 conviction in any collateral proceeding in this Court.

In his papers, Defendant indicates he is now serving a life sentence imposed May 29, 1993, by the United States District Court for the Eastern District of Oklahoma. The Court has been advised that Defendant filed a § 2255 motion challenging his 1993 conviction and sentence in the Eastern District of Oklahoma (Case No. 97-CV-267). That § 2255 motion was denied July 2, 1998.

In the instant motion pursuant to § 2255, Defendant alleges that his current sentence imposed in 1983 was enhanced by his 1974 conviction, and he now attempts to challenge the validity of that 1974 conviction on several grounds including ineffective assistance of counsel and due process

violations relating to an entrapment defense.

In his accompanying motion for the Court to accept tardy motion, Defendant seeks to avoid the imposition of the statute of limitations on the filing of his § 2255 motion by alleging that these issues were only recently discovered.

Section 2255 allows prisoners who are "in custody" under sentence of a federal court to move the sentencing court to vacate, set aside or correct the sentence.¹ A review of the record in the instant case reveals that the sentence imposed by this Court in 1974, i.e., five years imprisonment to be followed by five years parole, should have long since expired. Because Defendant has discharged his sentence and is no longer "in custody" under the 1974 conviction, this Court lacks jurisdiction over the instant § 2255 motion attacking the expired conviction. See Maleng v. Cook, 490 U.S. 488, 490 (1988). The proper avenue to challenge a prior, expired conviction used for enhancement is via a challenge to the conviction under which a defendant is currently in custody. Gamble v. Parsons, 898 F.2d 117, 118 (10th Cir. 1990). In such a proceeding, the movant may argue that his present sentence is improper because it has been enhanced by a prior, unconstitutional conviction. Id. In unpublished opinions, the Tenth Circuit has applied the holdings in Maleng and Gamble to proceedings under § 2255. United States v. Wilson, No. 97-4196, 1998 WL 243800 (10th Cir. May 14, 1998); United States v. Moland, No. 94-1032, 1994 WL 600985 (10th Cir. Nov. 3, 1994).

¹28 U.S.C. § 2255 provides, in pertinent part, as follows:

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

Therefore, because Defendant is no longer "in custody" pursuant to the 1974 conviction, the Court concludes that Defendant's § 2255 motion should be dismissed for lack of jurisdiction. Consequently, Defendant's motion for leave to accept tardy motion should be denied as moot.

ACCORDINGLY, IT IS HEREBY ORDERED that:

1. Defendant's motion to vacate, set-aside or correct sentence pursuant to 28 U.S.C. § 2255 is **dismissed with prejudice** for lack of jurisdiction.
2. Defendant's "Motion for This Court to Accept Tardy Motion Pursuant to 28 U.S.C. § 2255 and Rule 60(b)" is **denied as moot**.

SO ORDERED THIS 2 day of September, 1998.


TERRY C. KERN, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
DATE 9-8-98

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES NORWOOD HUTCHING,

Defendant.

No. 74-CR-74-K ✓
(98-CV-594-K)

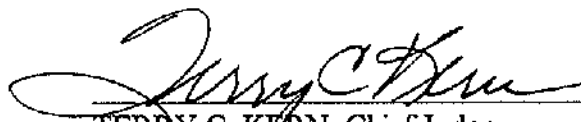
FILED
SEP - 4 1998
Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDGMENT

This matter came before the Court upon Defendant's motion to vacate set aside or correct sentence pursuant to 28 U.S.C. § 2255. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Plaintiff and against Defendant.

SO ORDERED THIS 2 day of September, 1998.


TERRY C. KERN, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT F. FEIGE,
STEVEN SECHREST, ROBERT W.
MARTIN, III, PATRICIA FEIGE,
DANNY GENE JOHNSON, GERALD
H. PUGH, TIMOTHY D. COX,

Defendants.

ENTERED ON DOCKET

DATE SEP 14 1998

Case No. 97-CR-62-H

FILED

SEP 03 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes on for consideration on the filing of the Stipulated Dismissal With Prejudice by the United States and the defendant, Robert F. Feige.

IT IS THEREFORE THE ORDER OF THE COURT that the above-styled case shall be and hereby is dismissed with prejudice as to defendant, Robert F. Feige.

IT IS FURTHER THE FINDING OF THE COURT, based on the stipulation of the parties, that the investigation and prosecution of the above-styled case was not vexatious, frivolous, or in bad faith by any employee or agent of the United States.

IT IS FURTHER THE ORDER OF THE COURT that each party shall bear its respective litigation costs and attorney fees.

Done this 2 day of ^{Sept.} ~~August~~, 1998.


SVEN ERIK HOLMES
UNITED STATES DISTRICT JUDGE

160

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT F. FEIGE,
STEVEN SECHREST, ROBERT W.
MARTIN, III, PATRICIA FEIGE,
DANNY GENE JOHNSON, GERALD
H. PUGH, TIMOTHY D. COX,

Defendants.

ENTERED ON DOCKET

DATE SEP 1 1998

Case No. 97-CR-62-H

FILED

SEP 03 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes on for consideration on the filing of the Stipulated Dismissal With Prejudice by the United States and the defendant, Robert W. Martin III.

IT IS THEREFORE THE ORDER OF THE COURT that the above-styled case shall be and hereby is dismissed with prejudice as to defendant, Robert W. Martin, III.

IT IS FURTHER THE FINDING OF THE COURT, based on the stipulation of the parties, that the investigation and prosecution of the above-styled case was not vexatious, frivolous, or in bad faith by any employee or agent of the United States.

IT IS FURTHER THE ORDER OF THE COURT that each party shall bear its respective litigation costs and attorney fees.

Done this 2 day of Sept, 1998.


SVEN ERIK HOLMES
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT F. FEIGE,
STEVEN SECHREST, ROBERT W.
MARTIN, III, PATRICIA FEIGE,
DANNY GENE JOHNSON, GERALD
H. PUGH, TIMOTHY D. COX,

Defendants.

ENTERED ON DOCKET

SEP 4 1998

DATE

Case No. 97-CR-62-H

FILED

SEP 03 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

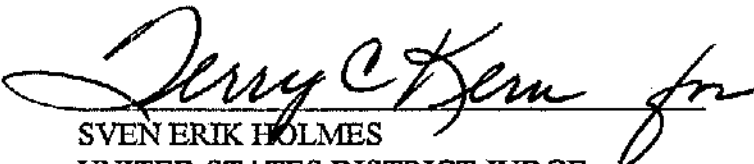
This matter comes on for consideration on the filing of the Stipulated Dismissal With Prejudice by the United States and the defendant, Timothy D. Cox.

IT IS THEREFORE THE ORDER OF THE COURT that the above-styled case shall be and hereby is dismissed with prejudice as to defendant, Timothy D. Cox.

IT IS FURTHER THE FINDING OF THE COURT, based on the stipulation of the parties, that the investigation and prosecution of the above-styled case was not vexatious, frivolous, or in bad faith by any employee or agent of the United States.

IT IS FURTHER THE ORDER OF THE COURT that each party shall bear its respective litigation costs and attorney fees.

Done this 2 day of Sept., 1998.


SVEN ERIK HOLMES
UNITED STATES DISTRICT JUDGE

158/

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT F. FEIGE,
STEVEN SECHREST, ROBERT W.
MARTIN, III, PATRICIA FEIGE,
DANNY GENE JOHNSON, GERALD
H. PUGH, TIMOTHY D. COX,

Defendants.

ENTERED ON DOCKET

DATE SEP 3 1998

Case No. 97-CR-62-H

FILED

SEP 03 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes on for consideration on the filing of the Stipulated Dismissal With Prejudice by the United States and the defendant, Steven Sechrest.

IT IS THEREFORE THE ORDER OF THE COURT that the above-styled case shall be and hereby is dismissed with prejudice as to defendant, Steven Sechrest.

IT IS FURTHER THE FINDING OF THE COURT, based on the stipulation of the parties, that the investigation and prosecution of the above-styled case was not vexatious, frivolous, or in bad faith by any employee or agent of the United States.

IT IS FURTHER THE ORDER OF THE COURT that each party shall bear its respective litigation costs and attorney fees.

Done this 2 day of Sept, 1998.


SVEN ERIK HOLMES
UNITED STATES DISTRICT JUDGE

157

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT F. FEIGE,
STEVEN SECHREST, ROBERT W.
MARTIN, III, PATRICIA FEIGE,
DANNY GENE JOHNSON, GERALD
H. PUGH, TIMOTHY D. COX,

Defendants.

ENTERED ON DOCKET

SEP 4 1998

DATE

Case No. 97-CR-62-H

FILED

SEP 03 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes on for consideration on the filing of the Stipulated Dismissal With Prejudice by the United States and the defendant, Patricia Feige.

IT IS THEREFORE THE ORDER OF THE COURT that the above-styled case shall be and hereby is dismissed with prejudice as to defendant, Patricia Feige.

IT IS FURTHER THE FINDING OF THE COURT, based on the stipulation of the parties, that the investigation and prosecution of the above-styled case was not vexatious, frivolous, or in bad faith by any employee or agent of the United States.

IT IS FURTHER THE ORDER OF THE COURT that each party shall bear its respective litigation costs and attorney fees.

Done this 2 day of Sept. 1998.


SVEN ERIK HOLMES
UNITED STATES DISTRICT JUDGE

156

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT F. FEIGE,
STEVEN SECHREST, ROBERT W.
MARTIN, III, PATRICIA FEIGE,
DANNY GENE JOHNSON, GERALD
H. PUGH, TIMOTHY D. COX,

Defendants.

ENTERED ON DOCKET

DATE SEP 4 1998

Case No. 97-CR-62-H

FILED

SEP 03 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes on for consideration on the filing of the Stipulated Dismissal With Prejudice by the United States and the defendant, Gerald H. Pugh.

IT IS THEREFORE THE ORDER OF THE COURT that the above-styled case shall be and hereby is dismissed with prejudice as to defendant, Gerald H. Pugh.

IT IS FURTHER THE FINDING OF THE COURT, based on the stipulation of the parties, that the investigation and prosecution of the above-styled case was not vexatious, frivolous, or in bad faith by any employee or agent of the United States.

IT IS FURTHER THE ORDER OF THE COURT that each party shall bear its respective litigation costs and attorney fees.

Done this 2 day of September, 1998.


SVEN ERIK HOLMES
UNITED STATES DISTRICT JUDGE

135

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT F. FEIGE,
STEVEN SECHREST, ROBERT W.
MARTIN, III, PATRICIA FEIGE,
DANNY GENE JOHNSON, GERALD
H. PUGH, TIMOTHY D. COX,

Defendants.

ENTERED ON DOCKET

DATE SEP 4 1998

Case No. 97-CR-62-H

FILED
SEP 03 1998
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes on for consideration on the filing of the Stipulated Dismissal With Prejudice by the United States and the defendant, Danny Gene Johnson.

IT IS THEREFORE THE ORDER OF THE COURT that the above-styled case shall be and hereby is dismissed with prejudice as to defendant, Danny Gene Johnson.

IT IS FURTHER THE FINDING OF THE COURT, based on the stipulation of the parties, that the investigation and prosecution of the above-styled case was not vexatious, frivolous, or in bad faith by any employee or agent of the United States.

IT IS FURTHER THE ORDER OF THE COURT that each party shall bear its respective litigation costs and attorney fees.

Done this 2 day of Sept. ~~August~~, 1998.


SVEN ERIK HOLMES
UNITED STATES DISTRICT JUDGE

154

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
AUG 31 1998

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RODERICK K. HOWARD,

Defendant.

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 90-CR-47-E ✓
97-C-432-E

ENTERED ON DOCKET

DATE 9-2-98

ORDER

Now before the Court is the Motion under 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence of the defendant, Roderick K. Howard (Docket #51).

Roderick Kenneth Howard was indicted on April 5, 1990 and charged with one count of conspiracy to possess with intent to distribute 50 grams or more of cocaine base, and one count of possession with intent to distribute 50 grams or more of cocaine base. A jury found Howard guilty of both counts. On September 6, 1990, Howard was sentenced to a term of 360 months incarceration. He appealed and his conviction was affirmed on both counts. Howard now seeks relief pursuant to 28 U.S.C. §2255, arguing that his counsel was ineffective for "failing to hold the government to its burden of proof" regarding the type of cocaine and for failing to object to the "obstruction of justice" enhancement, that the sentencing guidelines were passed in an unconstitutional manner and are void, and that the enhanced penalty provisions for crack cocaine are unconstitutional.

Legal Analysis

Defendant's first allegations of error rest on the assertion that his counsel was ineffective, first for failing to hold the government to its burden of proof, and second for failing to object to the

obstruction of justice enhancement. Ineffective assistance of counsel claims must be viewed under the Strickland test: 1) whether defendant's attorney's performance was not reasonably effective and 2) whether defendant's defense was prejudiced thereby. Strickland v. Washington, 466 U.S. 668, 693, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). A defendant can establish the first prong by showing that counsel performed below the level expected from a reasonably competent attorney in criminal cases. Strickland, 466 U.S. at 687-88. To establish the second prong, a defendant must show that this deficient performance prejudiced the defense, to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. See also Lockhart v. Fretwell, 506 U.S. 364, 369-70 (1993).

Further, the Court must presume that counsel's performance was reasonably effective, "the burden rests on the accused to demonstrate a constitutional violation." U.S. v. Cronie, 104 S.Ct. 2039, 2046 (1984). Under the Strickland rule the presumption of effective representation is a strong one. Indeed, "[j]udicial scrutiny of counsel's performance must be highly deferential." Strickland, 104 S.Ct. at 2065. The Court must "presume that the challenged action might be considered sound trial strategy." Hatch v. State of Oklahoma, 58 F.3d 1447, 1459 (10th Cir. 1995). Although the Strickland test was formulated in the context of evaluating a claim of ineffective assistance of trial counsel, the same test is applied in assessing the ineffectiveness of appellate counsel. United States v. Cook, 45 F.3d 388, 392 (10th Cir. 1995).

Here, defendant merely asserts that counsel "failed to hold the government to its burden" of proving that the substance involved was crack cocaine. However, at trial, a witness qualified as an expert in the field of chemical analysis, Paul Shchroeder, testified that the substance in the original

package and that taken from defendant after arrest was cocaine free base. (Tr. p. 349-51). In addition, Inspector Jones testified that the package in question contained "disks" of cocaine base. Howard fails demonstrate that his counsel was ineffective in light of this evidence.

Similarly, with respect to the enhancement for "obstruction of justice," defendant has not demonstrated either that his counsel was not reasonably effective, or that he was prejudiced thereby. A review of the record, and the applicable sentencing guidelines, reveals that the enhancement for obstruction of justice was proper when he committed perjury by denying under oath that he knew the contents of the package mailed to him from California.

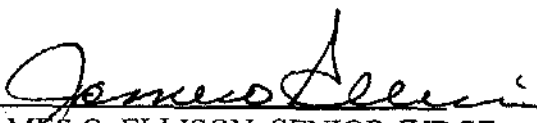
Howard also argues that the sentencing guidelines (the Comprehensive Crime Control Act of 1984) are unconstitutional. Howard's argument is that the Act is unconstitutional because it was attached to an appropriations bill, which is only temporary in nature, and therefore can the Act cannot survive after the expiration of the appropriations bill. Attacks on the constitutionality of the Comprehensive Crime Control Act, however, have been considered and rejected in Mistretta v. United States, 109 S.Ct. 647 (1989) and United States v. Munoz-Florez, 110 S.Ct. 1964 (1990). In Munoz-Flores, the Court specifically rejected the notion that the special assessment portion of the sentencing guidelines constituted a "revenue raising measure." Howard's argument is without merit.

Lastly, Howard argues that the enhanced penalty provisions for cocaine base violate the equal protection component of the due process clause. Again, these claims have been considered and rejected. United States v. Easter, 981 F.2d 1549 (10th Cir. 1992), United States v. Turner, 928 F.2d 956 (10th Cir. 1991).

Howard's Motion under 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence (Docket

#51) is DENIED.

SO ORDERED this 28th day of August, 1998.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 31 1998 CP

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RODERICK K. HOWARD,

Defendant.

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 90-CR-47-E
97-C-432-E

ENTERED ON DOCKET


DATE 9-2-98

JUDGMENT

This matter came before the Court upon Defendant's Motion To Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Docket #51). The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Plaintiff and against Defendant.

IT IS SO ORDERED THIS 28th DAY OF AUGUST, 1998.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

54

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA **FILED**

SEP - 1 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA)

Plaintiff)

VS)

Case Number: 95-CR-015-001-B

TYRONE McDANIEL)

Defendant)

ENTERED ON DOCKET

DATE SEP 02 1998

ORDER REVOKING SUPERVISED RELEASE

Now on this 27th day of August, 1998, this cause comes on for sentencing concerning allegations that McDaniel violated conditions of supervised release as set out in the Petition on Supervised Release filed on July 8, 1998. The defendant is present in person and represented by counsel, Jack Schishler. The Government is represented by Assistant U.S. Attorney James Swartz, and the United States Probation Office is represented by Doug Burris.

The defendant was heretofore convicted on his plea of guilty to Counts One of an Indictment, charging Conspiracy to Possess with Intent to Distribute Cocaine, in violation of 21 U.S.C. §§ 846, 841(a)(1) and 841(b)(1)(B)(iii). On June 28, 1996, he

was sentenced to fourteen (14) months custody, and a five (5) year term of supervised release. McDaniel was also ordered to pay a \$50 Special Monetary Assessment, to comply with drug testing and treatment as directed by the probation officer, and to comply with a special search condition. The offender began his term of supervised release on September 5, 1997, after being released from custody.

On July 15, 1998, a Revocation Hearing was held regarding the allegations noted in the Petition on Supervised Release, filed on July 8, 1998, said allegations being that on July 7, 1998, the defendant committed new law violations, that being possessing ten(10) "rocks" of cocaine base and possessing marihuana on July 7, 1998. The petition contained the additional allegation that the defendant tested positive for marihuana on March 19, 1998. McDaniel stipulated to the violations at the Revocation Hearing, and sentencing was set for August 14, 1998. This sentencing date was postponed until August 27, 1998.

As a result of the Sentencing Hearing, the Court found that the violations occurred after November 1, 1987, and that Chapter 7 of the U. S. Sentencing Guidelines is applicable. Further, the Court found that the most serious violation of supervised release, Possessing Cocaine Base, constituted a Grade B violation in accordance with USSG § 7B1.1(a)(2), and that the defendant's original Criminal History Category of VI was applicable for determining the imprisonment range. In addition, the Court found that a Grade B

violation and a Criminal History Category of VI establish a revocation imprisonment range of twenty-one (21) to twenty-seven (27) months.

In consideration of these findings and pursuant to U.S. vs. Lee, 957 F2d 770 (10th Cir. 1992), in which the Circuit determined that the policy statements in Chapter 7 were not mandatory, but must be considered by the Court, the following was ordered:

The defendant is committed to the custody of the U. S. Bureau of Prisons to be imprisoned for a term of twenty-four (24) months.

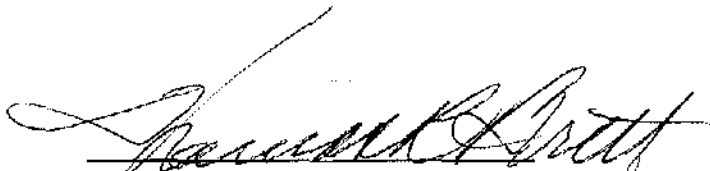
The Court recommends that McDaniel be placed in a Comprehensive Substance Abuse Treatment Program. The Court further recommends that due to safety and security concerns, McDaniel not be placed in a Bureau of Prisons facility in Texas or Oklahoma.


Upon being released from confinement, the defendant will be placed on supervised release for a term of one year. While on supervised release, the defendant shall comply with the standard conditions of supervision, as well as the following special conditions:

- 1) The defendant shall participate in a program of testing and treatment for substance abuse (to include inpatient treatment) as directed by the probation officer, until such time as released from the program by the probation officer.

2) The defendant shall abide by the "Special Search and Seizure Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on May 25, 1995.

The defendant is remanded to the custody of the U.S. Marshal pending his placement with the Bureau of Prisons.


The Honorable Thomas R. Brett
United States District Judge

United States District Court
Northern District of Oklahoma | SS
I hereby certify that the foregoing
is a true copy of the original on file
in this court.
Phil Lombardi, Clerk

Deputy